No. 11037

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

JAMES H. COLLINS, SIDNEY FISCHGRUND and CHRISTOPHER E. SCHIRM,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

TRANSCRIPT OF RECORD

(In ~~Two~~ 3 Volumes)

VOLUME I

(Pages 1 to 304, Inclusive)

Upon Appeals from the District Court of the United States for the Southern District of California, Central Division

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Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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---

*Page number appearing at foot of Certified Transcript.

No. 15229 Filed Feb. 4, 1942

Viol: Section 17(a)(1), Securities Act of 1933 (15 U. S. C. Section 77q(a)(1)),

Section 215 of the Criminal Code (18 U. S. C. 338).

Section 37 of the Criminal Code (18 U. S. C. 88). (Securities Act, Mail Fraud and Conspiracy.)

In the District Court of the United States in and for the Southern District of California
Central Division

Of the February Term A. D. 1942

The Grand Jurors of the United States of America, duly impaneled, sworn and charged to inquire of crimes and offenses within and for the body of the Central Division, Southern District of California, upon their oaths present and find that during the time hereinafter mentioned in this indictment:

That Union Associated Mines Company was a corporation organized and existing under and by virtue of the laws of the State of Utah, with its principal office at Salt Lake City, Utah.

That heretofore, to wit, during the period of time commencing on or about the first day of June, 1938, and continuously thereafter to and including the first day of December, 1939, at Los Angeles, California, in the Central Division of the Southern District of California and within the jurisdiction of this Court:

JAMES H. COLLINS
SIDNEY FISCHGRUND
FRED V. GORDON
JOHN H. MORGAN
CHRISTOPHER E. SCHIRM,

whose full and true names are to the Grand Jurors otherwise unknown, and who are hereinafter in the several counts of this indictment sometimes referred to as "defendants", heretofore and prior to the several acts hereinafter set forth of using the United States mails, had devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, [2] representations and promises from: Erlene Bates, Ida M. Apperson, Henry K. Elder, D. E. Williams, Ray W. Peet, Lewis J. Hampton, R. D. Brown, Mathilda M. Klinger, Grace T. Walker, Katherine C. Davis, Ila M. Hutchason, Frank L. Tucker and other persons whose names are to the Grand Jurors unknown and are too numerous to mention herein, including that class of persons then residing in the States of California and Utah and elsewhere, whom the said defendants might induce and cause to be induced to purchase stock of Union Associated Mines Company, hereinafter sometimes referred to as the "corporation", all of which said persons are hereinafter referred to as the "persons to be defrauded", which scheme and artifice was, in substance, as follows:

It was a part of said scheme and artifice that the defendants would incorporate under the laws of the State of California, Plymouth Oil Company and that the defendant Gordon would be its president, the defendant Fischgrund would be its vice-president, and that Guy B. Davis would be its secretary and treasurer.

It was further a part of said scheme and artifice that the defendants would purchase shares of stock of the "corporation" at prices of 1/4¢ to 1/2¢ per share from the holders of the outstanding shares of stock of the "corporation".

It was further a part of said scheme and artifice that the defendants would place the defendant Morgan in the position of secretary and treasurer of the "corporation" and that they would place R. R. Bray as president of the "corporation".

It was further a part of said scheme and artifice that the defendants would cause the "corporation" (whose right to transact business in the State of Utah had been forfeited and whose charter had been suspended) to be restored to and reinstated in the exercise of its former rights, corporate privileges and immunities under the laws of the State of Utah.

It was further a part of said scheme and artifice that the defendants would execute and cause to be executed an agreement between the "corporation" and Plymouth Oil Company whereby the "corporation" conveyed 635,000 [3] shares of its stock to Plymouth Oil Company and whereby Plymouth Oil Company conveyed to the "corporation" a 50 per cent interest in the gross production of oil to be produced from a well to be drilled in Torrance Field, California.

It was further a part of said scheme and artifice that the defendants by the means and under the circumstances hereinafter set forth, would sell and cause to be sold to the persons to be defrauded shares of stock of said "corporation" at artificially excessive and inflated prices.

It was further a part of said scheme and artifice that the defendants in the sale of the stock of the "corporation" to the persons to be defrauded would incite and entice the persons to be defrauded and cause the persons to be defrauded to be incited and enticed to purchase the shares of stock of the "corporation" by painting glowing prospects of great profit from an investment in said shares of

stock and by false and fraudulent representations and promises and by means of untrue statements of material facts, calculated and intended by said defendants to arouse in the persons to be defrauded expectations of profit and financial gain from such investments far beyond the limits warranted by existing conditions.

It was a further part of said scheme and artifice that the defendants would deceptively, deceitfully and fraudulently manipulate the market in the stock of said "corporation" so as artificially to advance and inflate and cause artificially to be advanced and inflated the price thereof, from approximately 1/4¢ per share to 5¢ per share, for the purpose and with the intent of raising the market price so as to enable the defendants to sell to the persons to be defrauded and to the public generally the shares of stock of said "corporation".

It was further a part of said scheme and artifice that the defendants would not and they did not permit and allow the market price for said shares of stock of the said "corporation" to be determined by the normal attrition of supply and demand for said stock by the actual worth of said stock, by the normal clash in the open over-the-counter market [4] between all the then buyers and all the then sellers of said stock, but would arbitrarily and fraudulently fix the bid and asked and market prices according to said scheme and artifice, at successively rising, inflated and excessive prices, without regard for the public demand for purchases of said stock and the supply of said stock available from brokers and dealers.

It was further a part of said artifice and scheme that the defendants would lease and assign and cause to be leased and assigned unproven and undeveloped properties claimed by defendants to be of value to said "corpora-

tion", and secure for themselves from said "corporation" 235,000 shares of the stock of said "corporation".

It was further a part of said scheme and artifice that the defendants would execute and cause to be executed an agreement between the "corporation" and Plymouth Oil Company whereby the "corporation" conveyed 635,000 additional shares of its stock to Plymouth Oil Company and whereby Plymouth Oil Company conveyed to the "corporation" a 40 per cent interest in the gross production of oil to be produced from a well to be drilled in Torrance Field, California, after the payment of the costs of drilling of such well.

It was further a part of said scheme and artifice that the defendants would execute and cause to be executed an agreement whereby E. Byron Siens should sell 1,000,000 shares of the stock of the "corporation" which said stock was to be and was furnished said Siens by defendants and Plymouth Oil Company to defendant Collins at successively rising and excessive prices of from 2-1/2¢ to 30¢ per share, and that said Collins would thereafter sell and cause to be sold to the persons to be defrauded and to the public generally said 1,000,000 shares of stock of said "corporation" at successively rising, inflated and excessive prices.

It was further a part of said scheme and artifice that the defendants for the purpose of manipulating the exchange price, for the purpose of securing an additional medium through which they, the said defendants, could market the shares of stock of said "corporation", and for the [5] purpose and with the intent of selling to the persons to be defrauded shares of stock of the "corporation", and with the knowledge that the stock of the "corporation" had theretofore been listed for trading upon

Salt Lake Stock Exchange, Salt Lake City, Utah, would file and cause to be filed an application with Salt Lake Stock Exchange to relist the stock of the "corporation" upon Salt Lake Stock Exchange.

It was further a part of said scheme and artifice that the defendants would print, edit and prepare and cause to be printed, edited and prepared, bulletins, circulars, letters, notices, and other literature, all of which would contain false and misleading statements as hereinbelow described, and which would be disseminated and transmitted to the persons to be defrauded and to the public generally by the defendants, their agents and employees, and the defendants would conduct and cause to be conducted an intensive, extensive and persistent selling campaign of the shares of stock of the "corporation" to the persons to be defrauded at artificially excessive, inflated and rising prices in the cities of Los Angeles, California, Salt Lake City, Utah, and elsewhere.

It was further a part of said scheme and artifice that the defendants would, for the purpose of inducing and causing the persons to be defrauded to part with their money and property, and to purchase shares of stock of the "corporation", make and cause to be made the following false, fraudulent and untrue representations, promises and statements to the persons to be defrauded, by means of oral communications and by means of written communications, circulars, bulletins, letters, telegrams, and newspaper advertisements, which said representations, promises and statements would be and were substantially as follows:

(1) That Plymouth Oil Company was owned almost in its entirety by Roy Lacy, a prominent business man of Los Angeles, California, when in truth and in fact, as

the said defendants then and there well knew, Plymouth Oil Company was not owned almost in its entirety by Roy Lacy, but on the contrary, Roy Lacy at no time owned any stock of Plymouth Oil Company but was a creditor of Plymouth Oil Company and defendant Gordon [6] by reason of cash advances made to Plymouth Oil Company at the request of the defendants.

(2) That Roy Lacy, a prominent business man of Los Angeles, California, was president of Plymouth Oil Company, when in truth and in fact, as the defendants then and there well knew, Roy Lacy was not president of Plymouth Oil Company, but on the contrary, the defendant Gordon at all times after the incorporation of Plymouth Oil Company, was its president, and Roy Lacy at no time was an officer or director of Plymouth Oil Company.

(3) That Union Associated Mines Company would pay a dividend of more than 3¢ per share upon its stock within the first year of its business transactions with Plymouth Oil Company, when in truth and in fact, as the defendants then and there well knew, Union Associated Mines Company would not pay a dividend of more than 3¢ per share upon its stock within the first year of its transactions with Plymouth Oil Company, but on the contrary, the only source of revenue of Union Associated Mines Company was its 50 per cent interest in the gross production of oil from Plymouth Oil Company #1 well, which production commenced in December, 1938, at approximately 225 barrels of oil per day and declined to an average production of approximately 30 barrels of oil per day in March, 1939.

(4) That the stock of Union Associated Mines Company would increase in price from 3¢ to 15¢ or 20¢ per share because of the oil interest that Union Associated

Mines Company had acquired, when in truth and in fact, as the defendants then and there well knew, the stock of Union Associated Mines Company would not increase in price from 3¢ to 15¢ or 20¢ per share because of the oil interest that Union Associated Mines Company had acquired, but on the contrary, the only source of revenue of Union Associated Mines Company was its 50 per cent interest in the gross production of oil from Plymouth Oil Company #1 well, which production commenced in December, 1938, at approximately 225 barrels of oil per day and declined to an average production of approximately 30 barrels of [7] oil per day in March, 1939, and the only additional oil interest acquired by Union Associated Mines Company was a 40 per cent interest in the gross production of oil obtained from Plymouth Oil Company well #2 after the costs of drilling well #2 had been paid, and from which no income was ever received by Union Associated Mines Company.

(5) That Union Associated Mines Company owned one producing well and would shortly bring in a second producing well, when in truth and in fact, as the defendants then and there well knew, Union Associated Mines Company did not own one producing well and would not shortly bring in a second producing well, but on the contrary, through contracts with Plymouth Oil Company, Union Associated Mines Company acquired merely a 50 per cent interest in the gross production of oil to be obtained from Plymouth Oil Company well #1 and 40 per cent interest in the gross production of oil to be obtained from Plymouth Oil Company well #2 after the costs of drilling well #2 had been paid.

(6) That an investment in the stock of Union Associated Mines Company would return a lot of money and a big income, when in truth and in fact, as the defendants

then and there well knew, an investment in the stock of Union Associated Mines Company would not return a lot of money and would not return a big income, but on the contrary, by reason of previous drilling and close drilling in the area wherein Plymouth Oil Company wells #1 and #2 were located, production from each of said wells immediately and rapidly declined and sufficient oil was not obtainable from said wells to pay for the costs of drilling.

(7) That Plymouth Oil Company well #1 was producing 350 barrels of oil per day, when in truth and in fact, as the defendants then and there well knew, Plymouth Oil Company well #1 was not producing 350 barrels of oil per day, but on the contrary, Plymouth Oil Company well #1 at no time produced more than 225 barrels of oil per day, and in January, 1939, its average daily production was approximately 70 barrels of oil.

(8) That Plymouth Oil Company well #2 had been brought into [8] production at 500 barrels per day and was good for 1000 barrels per day if it were opened to its full capacity, when in truth and in fact, as the defendants then and there well knew, Plymouth Oil Company well #2 had not been brought into production at 500 barrels per day and was not good for 1000 barrels per day if it were opened to its full capacity, but on the contrary, the first and greatest production from Plymouth Oil Company well #2 was about 255 barrels per day, and within one month after production was obtained, Plymouth Oil Company well #2 was producing slightly over 70 barrels of oil per day.

(9) That Plymouth Oil Company well #1 came in at 500 barrels per day, when in truth and in fact, as the defendants then and there well knew, Plymouth Oil Com-

pany well #1 did not come in at 500 barrels per day, but on the contrary, the first and greatest production from Plymouth Oil Company well #1 was about 225 barrels of oil per day.

(10) That Union Associated Mines Company, with 1,400,000 shares of its stock outstanding, was earning 2-1/2¢ per share, when in truth and in fact, as the defendants then and there well knew, Union Associated Mines Company, with 1,400,000 shares of its stock outstanding, was not earning 2-1/2¢ per share.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said James H. Collins, Sidney Fischgrund, Fred V. Gordon, John H. Morgan and Christopher E. Schirm, defendants as aforesaid, on or about the 6th day of February, 1939, in the City of Los Angeles, California, in the Central Division of the Southern District of California and within the jurisdiction of this Court, so having devised the said scheme and artifice to defraud, did unlawfully, wilfully and feloniously in the sale of a security, to wit, the common stock of Union Associated Mines Company, by use of the United States mails, employ said scheme and artifice to defraud, and said use of the United States mails was in the manner following, to wit:

Said defendants on or about the 6th day of February, 1939, did place and cause to be placed in the Post Office of the United States of [9] America in the City of Los Angeles, California, aforesaid, to be transmitted by the Post Office establishment, a letter contained in a postpaid

envelope addressed to Mrs. Erlene Bates, 921 South Spaulding Drive, Los Angeles, California, said letter being substantially of the tenor following: [10]

PLYMOUTH OIL COMPANY
TUcker 8494

911 Foreman Building
Los Angeles, California
February 6th, 1939

Mrs. Erlene Bates
921 South Spaulding Drive
Los Angeles, California

Dear Madam:

You will please find enclosed 17,000 shares of Union Associated Mines Company stock, which has been issued in your name.

Very truly yours,

PLYMOUTH OIL COMPANY

MK By Guy B. Davis

Encl.

[Written]: EBB.

That said person to whom said envelope was addressed then was one of said persons to be defrauded, all of which acts of the said defendants and each of them were against the peace and dignity of the United States and contrary to the form of the Statute of the same, in such case made and provided. (Section 17(a)(1), Securities Act of 1933, Section 77q(a)(1), Title 15 U. S. C.) [11]

Second Count

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That they do here reallege and incorporate herein as if again set forth at length, the First Count of this indictment, except the last three paragraphs thereof;

That James H. Collins, Sidney Fischgrund, Fred V. Gordon, John H. Morgan and Christopher E. Schirm, defendants as aforesaid, on or about the 23rd day of March, 1939, in the City of Pasadena, California, in the Central Division of the Southern District of California and within the jurisdiction of this Court, so having devised the said scheme and article to defraud, did unlawfully, wilfully and feloniously in the sale of a security, to wit: the common stock of Union Associated Mines Company, by use of the United States mails, employ said scheme and artifice to defraud, and said use of the United States mails was in the manner following, to wit:

Said defendants on or about the 23rd day of March, 1939, in the City of Pasadena, California, caused to be delivered by the United States mails, according to the direction thereon, a certain letter addressed to Miss Grace T. Walker, 1400 Hillcrest Avenue, Pasadena, California, enclosed in a postpaid envelope, which said letter was substantially of the tenor following: [12]

R. R. Bray,
President

J. H. Morgan,
Secretary-Treasurer

UNION ASSOCIATED MINES COMPANY
Telephone Wasatch 2130

Suite 526 Utah Oil Bldg. Salt Lake City, Utah
March 22, 1939

Miss Grace T. Walker
1400 Hillcrest Avenue
Pasadena, California

Dear Madam:

Enclosed find certificates in the name of Grace T. Walker, 26,667 shares; Bessie G. McLean, 5,333 shares; Katherine C. Davis, 4,000; and Matilda M. Klinger, 4,000 shares of Union Associated Mines Company stock, as transferred.

Very truly yours,
Margaret Florence
Transfer Agent

enclosure

[Written]: M. M. Klinger

That said person to whom said envelope was addressed then was one of said persons to be defrauded, all of which acts of the said defendants and each of them were against the peace and dignity of the United States and contrary to the form of the Statute of the same, in such case made and provided. (Section 17(a)(1), Securities Act of 1933, Section 77q(a)(1), Title 15 U. S. C.) [13]

Third Count

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That they do here reallege and incorporate herein as if again set forth at length, the First Count of this indictment, except the last three paragraphs thereof;

That James H. Collins, Sidney Fischgrund, Fred V. Gordon, John H. Morgan and Christopher E. Schirm, defendants as aforesaid, on or about the first day of April, 1939, in the Central Division of the Southern District of California, and within the jurisdiction of this Court, then having devised the scheme and artifice in said First Count described, for the purpose of executing the same, and attempting so to do, unlawfully, wilfully and feloniously did cause to be delivered by the United States Mails, according to the direction thereon, a certain letter addressed to Miss Ida M. Apperson, 401 South Gibson, Compton, California, enclosed in a postpaid envelope, which letter was substantially of the tenor following: [14]

R. R. Bray,
President

J. H. Morgan,
Secretary-Treasurer

UNION ASSOCIATED MINES COMPANY
Telephone Wasatch 2130

Suite 526 Utah Oil Bldg. Salt Lake City, Utah
March 31, 1939

Miss Ida M. Apperson
401 South Gibson
Compton, California

Dear Madam:

Enclosed find your certificate for 1,000 shares of Union Associated Mines Company stock as transferred to your name.

Very truly yours,
Margaret Florence
Transfer Agent

Union Associated Mines Co.
526 Utah Oil Bldg.
Salt Lake City, Utah

[Stamped]: Salt Lake City 3 Utah Mar 21 2 PM 1939

[Canceled postage stamp.]

Miss Ida M. Apperson
401 South Gibson
Compton, California

That said person to whom said envelope was addressed then was one of said persons to be defrauded, all of which acts of the said defendants, and each of them, were against the peace and dignity of the United States and contrary to the form of the Statute of the same, in such case made and provided. (Title 18 U. S. C., Section 338.) [15]

Fourth Count

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That they do here reallege and incorporate herein as if again set forth at length, the First Count of this indictment, except the last three paragraphs thereof;

That James H. Collins, Sidney Fischgrund, Fred V. Gordon, John H. Morgan and Christopher E. Schirm, defendants as aforesaid, on or about the 13th day of July, 1939, in the Central Division of the Southern District of California, and within the jurisdiction of this Court, then having devised the scheme and artifice in said First Count described, for the purpose of executing the same, and attempting so to do, unlawfully, wilfully and feloniously did cause to be delivered by the United States

mails, according to the directions thereon, a certain letter addressed to Mr. Lewis J. Hampton, 1054 South Hudson Avenue, Los Angeles, California, enclosed in a postpaid envelope, which letter was substantially of the tenor following: [16]

R. R. Bray, President — J. H. Morgan, Secretary-Treasurer

UNION ASSOCIATED MINES COMPANY
Telephone Wasatch 2130

Suite 526 Utah Oil Bldg. — Salt Lake City, Utah
July 12, 1939

Mr. Lewis J. Hampton
1054 South Hudson Avenue
Los Angeles, California

Dear Sir:

Answering your recent inquiry, this is to advise you that since the new management took over the Union Associated Mines Company in the Fall of 1938, they have, in conjunction with the Plymouth Oil Company of Los Angeles, drilled two wells in the Torrence Oil Field, Los Angeles County.

The first well has netted the Company $3923.00 to date. The second well cost approximately $37,000 and has not yet been paid for. Your Company will receive no payments until the well is paid for.

Our expenses to date have been $1603.00, which included re-establishing the old corporation, protecting the mining claims controlled by the Union Associated, office expenses, application for registration with the S. E. C., and application for listing with the Salt Lake Stock Exchange.

The Company has been somewhat disappointed in the returns from the two wells and has not been able to pay a dividend as soon as they expected. However, the Company does expect to pay a dividend as soon as the money has been earned from its two wells.

Very truly yours,
UNION ASSOCIATED MINES COMPANY
J. H. Morgan
J. H. Morgan, Secretary

JHM-mf

526 Utah Oil Bldg.
Salt Lake City, Utah

[Stamped]: Salt Lake City 1 Utah Jul 12 11:30 AM 1939

[Canceled postage stamp]

Lewis J. Hampton,
1054 So. Hudson Ave.,
Los Angeles, California

That said person to whom said envelope was addressed then was one of said persons to be defrauded, all of which acts of the said defendants, and each of them. were against the peace and dignity of the United States and contrary to the form of the Statute of the same, in such case made and provided. (Title 18 U. S. C., Section 338) [17]

Fifth Count

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That they do here reallege and incorporate herein as if again set forth at length, the First Count of this indictment, except the last three paragraphs thereof;

That James H. Collins, Sidney Fischgrund, Fred V. Gordon, John H. Morgan and Christopher E. Schirm, defendants as aforesaid, on or about the 2nd day of August, 1939, in the Central Division of the Southern District of California, and within the jurisdiction of this Court, then having devised the scheme and artifice in said First Count described, for the purpose of executing the same, and attempting so to do, unlawfully, wilfully and feloniously did cause to be delivered by the United States mails, according to the direction thereon, a certain letter addressed to Mathilda M. Klinger, 1400 Hillcrest Avenue, Pasadena, California, enclosed in a postpaid envelope, which letter was substantially of the tenor following: [18]

Wm. Weeks, President — J. H. Morgan, Secretary-Treasurer

UNION ASSOCIATED MINES COMPANY
Telephone Wasatch 2130

Suite 526 Utah Oil Bldg. — Salt Lake City, Utah
August 1, 1939

To the Stockholders of Union Associated Mines Co.:

The following is a report of your Company since the No. 1 well at Torrence Field, Los Angeles County was drilled.

The No. 1 well has produced $8,241.44 as shown by the books of the Standard Oil Company, (Oil Purchaser). Union Associated interests amount to $4,115.22. From this amount, your Directors have declared a dividend payable August 30, 1939, of $1.00 per thousand shares on the issued and outstanding stock of record, (except the 635,000 shares delivered to the Plymouth Oil Company on Well No. 2, which 635,000 shares was delivered ex-dividend as per con-

tract between the two Companies.) Transfer books of the Company will be opened for transfering stock until August 23, 1939.

The No. 2 well has produced $5,290.00 to date. This amount has been applied to costs of drilling as per original contract whereby Union Associated acquired its interests in No. 2 well.

The 40 acres in Kearn County remain unchanged, no well having been completed to prove or disprove the District. The lease at Lomita has been abandoned because the drilling in that area has proven unfavorable. From present appearances, the Union Associated will not acquire any interest in the West Montebello Field because the test well (Goff Course Well) is reported unfavorable at 8200 feet. This has been quite disappointing, as your Directors had intended making a very favorable deal with the Plymouth Oil officials on acreage in that District had the test well been successful.

There has been a contract let to drill the Beacon Dome, located on the Meridian Anticline Unita County, Wyoming. Through the efforts of the Plymouth Oil Company and the writer, your Company has acquired a 40-acre lease favorably located on that structure immediately adjacent to the land acquired by the drilling company. We are, also, negotiating for an 80-acre lease on Sulphur Creek Dome, which, from present appearances will be drilled this fall. These leases will cost the Company no stock and not to exceed $100.00 each.

The Company has protected its mining claims in the Cottonwood and Erickson Mining Districts. These are the most important claims the Company owned during its metal-mining activity.

As heretofore stated, the present policy of the Union Associated is to acquire interests in oil wells or leases prior to drilling, with the expectation of big returns should the wells prove commercial. Of course, each attempt will not be successful, but adhering to the law of averages, we feel that this Company can be made a success.

In the future, the Company will attempt to get out a report as often as possible, but it is quite impractical to answer each individual letter, so please bear with us until a report to all the stockholders can be sent.

The cost of transfering stock is 25 cents for each certificate and 12 cents Federal transfer tax per 1000 shares.

Very truly yours,

UNION ASSOCIATED MINES COMPANY,
By J. H. Morgan, Secretary

[Written]: M. M. Klinger

That said person to whom said envelope was addressed then was one of said persons to be defrauded, all of which acts of the said defendants, and each of them, were against the peace and dignity of the United States and contrary to the form of the Statute of the same, in such case made and provided. (Title 18 U. S. C., Section 338) [19]

Sixth Count

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That they do here reallege and incorporate herein as if again set forth at length, the First Count of this indictment, except the last three paragraphs thereof:

That James H. Collins, Sidney Fischgrund, Fred V. Gordon, John H. Morgan and Christopher E. Schirm, defendants as aforesaid, on or about the 2nd day of August, 1939, in the Central Division of the Southern District of California, and within the jurisdiction of this Court, then having devised the scheme and artifice in said First Count described, for the purpose of executing the same, and attempting so to do, unlawfully, wilfully and feloniously did cause to be delivered by the United States mails, according to the direction thereon, a certain letter addressed to Henry K. Elder, 920 Walter P. Story Building, Los Angeles, California, enclosed in a postpaid envelope, which letter was substantially of the tenor following: [20]

Wm. Weeks,
President

J. H. Morgan,
Secretary-Treasurer

UNION ASSOCIATED MINES COMPANY
Telephone Wasatch 2130

Suit 526 Utah Oil Bldg. Salt Lake City, Utah

[Written]: 20th Div—HKE

August 1, 1939

To the Stockholders of Union Associated Mines Co.:

The following is a report of your Company since the No. 1 well at Torrence Field, Los Angeles County was drilled.

The No. 1 well has produced $8,241.44 as shown by the books of the Standard Oil Company, (Oil Purchaser). Union Associated interests amount to $4,115.22. From this amount, your Directors have declared a dividend payable August 30, 1939, of $1.00 per thousand shares on the issued and outstanding stock of record, (except the 635,000 shares

delivered to the Plymouth Oil Company on Well No. 2, which 635,000 shares was delivered ex-dividend as per contract between the two companies.) Transfer books of the Company will be opened for transferring stock until August 23, 1939.

The No. 2 well has produced $5,290.00 to date. This amount has been applied to costs of drilling as per original contract whereby Union Associated acquired its interests in No. 2 well.

The 40 acres in Kearn County remain unchanged, no well having been completed to prove or disprove the District. The lease at Lomita has been abandoned because the drilling in that area has proven unfavorable. From present appearances, the Union Associated will not acquire any interest in the West Montebello Field because the test well (Goff Course Well) is reported unfavorable at 8200 feet. This has been quite disappointing, as your Directors had intended making a very favorable deal with the Plymouth Oil officials on acreage in that District had the test well been successful.

There has been a contract let to drill the Beacon Dome, located on the Meridian Anticline Uinta County, Wyoming. Through the efforts of the Plymouth Oil Company and the writer, your Company has acquired a 40-acre lease favorably located on that structure immediately adjacent to the land acquired by the drilling company. We are, also, negotiating for an 80-acre lease on Sulphur Creek Dome, which, from present appearances will be drilled this fall. These leases will cost the Company no stock and not to exceed $100.00 each.

The Company has protected its mining claims in the Cottonwood and Erickson Mining Districts.

These are the most important claims the Company owned during its metal-mining activity.

As heretofore stated, the present policy of the Union Associated is to acquire interests in oil wells or leases prior to drilling, with the expectation of big returns should the wells prove commercial. Of course, each attempt will not be successful, but adhering to the law of averages, we feel that this Company can be made a success.

In the future, the Company will attempt to get out a report as often as possible, but it is quite impractical to answer each individual letter, so please bear with us until a report to all the stockholders can be sent.

The cost of transfering stock is 25 cents for each certificate and 12 cents Federal transfer tax per 1000 shares.

Very truly yours,
UNION ASSOCIATED MINES COMPANY,
By J. H. Morgan, Secretary.

That said person to whom said envelope was addressed then was one of said persons to be defrauded, all of which acts of the said defendants, and each of them were against the peace and dignity of the United States and contrary to the form of the Statute of the same, in such case made and provided. (Title 18 U. S. C., Section 338) [21]

Seventh Count

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That they do here reallege and incorporate herein as if again set forth at length, the First Count of this indictment, except the last three paragraphs thereof;

That James H. Collins, Sidney Fischgrund, Fred V. Gordon, John H. Morgan and Christopher E. Schirm, defendants as aforesaid, on or about the 2nd day of August, 1939, in the Central Division of the Southern District of California, and within the jurisdiction of this Court, then having devised the scheme and artifice in said First Count described, for the purpose of executing the same, and attempting so to do, unlawfully, wilfully and feloniously did cause to be delivered by the United States mails, according to the direction thereon, a certain letter addressed to Ila Mae Hutchason, 328 South Commonwealth Avenue, Los Angeles, California, enclosed in a postpaid envelope, which letter was substantially of the tenor following: [22]

Wm. Weeks, President — J. H. Morgan, Secretary-Treasurer

UNION ASSOCIATED MINES COMPANY

Telephone Wasatch 2130

Suite 526 Utah Oil Bldg. — Salt Lake City, Utah

August 1, 1939

To the Stockholders of Union Associated Mines Co.:

The following is a report of your Company since the No. 1 well at Torrence Field, Los Angeles County was drilled.

The No. 1 well has produced $8,241.44 as shown by the books of the Standard Oil Company, (Oil Purchaser). Union Associated interests amount to $4,115.22. From this amount, your Directors have declared a dividend payable August 30, 1939, of $1.00 per thousand shares on the issued and outstanding stock of record, (except the 635,000 shares delivered to the Plymouth Oil Company on Well No.

2, which 635,000 shares was delivered ex-dividend as per contract between the two Companies.) Transfer books of the Company will be opened for transferring stock until August 23, 1939.

The No. 2 well has produced $5,290.00 to date. This amount has been applied to costs of drilling as per original contract whereby Union Associated acquired its interests in No. 2 well.

The 40 acres in Kearn County remain unchanged, no well having been completed to prove or disprove the District. The lease at Lomita has been abandoned because the drilling in that area has proven unfavorable. From present appearances, the Union Associated will not acquire any interest in the West Montebello Field because the test well (Goff Course Well) is reported unfavorable at 8200 feet. This has been quite disappointing, as your Directors had intended making a very favorable deal with the Plymouth Oil officials on acreage in that District had the test well been successful.

There has been a contract let to drill the Beacon Dome, located on the Meridian Anticline Uinta County, Wyoming. Through the efforts of the Plymouth Oil Company and the writer, your Company has acquired a 40-acre lease favorably located on that structure immediately adjacent to the land acquired by the drilling company. We are, also, negotiating for an 80-acre lease on Sulphur Creek Dome, which, from present appearances will be drilled this fall. These leases will cost the Company no stock and not to exceed $100.00 each.

The Company has protected its mining claims in the Cottonwood and Erickson Mining Districts.

These are the most important claims the Company owned during its metal-mining activity.

As heretofore stated, the present policy of the Union Associated is to acquire interests in oil wells or leases prior to drilling, with the expectation of big returns should the wells prove commercial. Of course, each attempt will not be successful, but adhering to the law of averages, we feel that this Company can be made a success.

In the future, the Company will attempt to get out a report as often as possible, but it is quite impractical to answer each individual letter, so please bear with us until a report to all the stockholders can be sent.

The cost of transfering stock is 25 cents for each certificate and 12 cents Federal transfer tax per 1000 shares.

Very truly yours,

UNION ASSOCIATED MINES COMPANY,

By J. H. Morgan, Secretary

[Written]: Hutchason

That said person to whom said envelope was addressed then was one of said persons to be defrauded, all of which acts of the said defendants, and each of them, were against the peace and dignity of the United States and contrary to the form of the Statute of the same, in such case made and provided. (Title 18 U. S. C., Section 338) [23]

Eighth Count

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That they do here reallege and incorporate herein as if again set forth at length, the First Court of this indictment, except the last three paragraphs thereof;

That James H. Collins, Sidney Fischgrund, Fred V. Gordon, John H. Morgan and Christopher E. Schirm, defendants as aforesaid, on or about the 13th day of August, 1939, in the Central Division of the Southern District of California, and within the jurisdiction of this Court, then having devised the scheme and artifice in said First Count described, for the purpose of executing the same, and attempting so to do, unlawfully, wilfully and feloniously did cause to be delivered by the United States mails, according to the direction thereon, certificates numbered 4171, 4172, 4173, 4174 and 4175 each for 1000 shares of the common stock of Union Associated Mines Company, which certificates were enclosed in a postpaid envelope addressed to Mr. R. W. Peet, 937 West 49th Street, Los Angeles, California.

That said person to whom said envelope was addressed then was one of said persons to be defrauded, all of which acts of the said defendants, and each of them, were against the peace and dignity of the United States and contrary to the form of the Statute of the same, in such case made and provided. (Title 18 U. S. C., Section 338)

Union Associated Mines Co.
526 Utah Oil Bldg.
Salt Lake City, Utah

[Stamped]: Salt Lake City Utah 12:38 PM 1939
[Canceled postage stamps]

Mr R. W. Peet
937 West 49th Street
Los Angeles, California

[Written]: Union Ass. Mines Co Aug 8th 1939

25¢ per C tran	$1.25	5000 Shares.
12¢ per C tax	60	
Ins & Post	12	
	$1.97	

R. W. Peet [24]

Ninth Count

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That they do here reallege and incorporate herein as if again set forth at length, the First Count of this indictment, except the last three paragraphs thereof;

That James H. Collins, Sidney Fischgrund, Fred V. Gordon, John H. Morgan and Christopher E. Schirm, defendants as aforesaid, on or about the 21st day of February, 1939, in the Central Division of the Southern District of California, and within the jurisdiction of this Court, then having devised the scheme and artifice in said First Count described, for the purpose of executing the same, and attempting so to do, unlawfully, wilfully and feloniously did cause to be delivered by the United States mails, according to the direction thereon, a certain confirmation of the purchase of 5000 shares of stock of Union Associated Mines Company, addressed to Frank L. Tucker, 1838 Victoria Avenue, Los Angeles, California, enclosed

in a postpaid envelope, which confirmation was substantially of the tenor following: [25]

R. L. COLBURN COMPANY
Brokers
Member
San Francisco Mining Exchange

639 S. Spring Street
Los Angeles, California
Telephone TUcker 6274

155 Montgomery Street
San Francisco, California
Telephone KEarny 2580

Frank L. Tucker 2/20/39

As agent we have this day Purchased for your account

No. Shares	Stock	Price	Amount	Com.	Amount
5000	Union Assoc.	.02¾	137.50	10.00	147.50

This transaction was consumated by us as broker for both buyer and sell.

All orders for the purchase and sale of stocks and bonds are received and executed with the distinct understanding that Actual Delivery is contemplated and that the party giving the order so understands and agrees.

It is further understood and agreed that on all accounts the right is reserved to close transactions without notice, when protection is exhausted, or so nearly so, in our judgment, as to endanger the account, and to settle contracts in accordance with the rules and customs prevailing, where order is executed.

We advise that you have these certificates transferred into your name immediately.

Thanking you for your kind order.

Yours very truly,
R. L. COLBURN COMPANY
By R. Evans

That said person to whom said envelope was addressed then was one of said persons to be defrauded, all of which acts of the said defendants, and each of them, were against the peace and dignity of the United States and contrary to the form of the Statute of the same, in such case made and provided. (Title 18 U. S. C., Section 338) [26]

Tenth Count

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That they do here reallege and incorporate herein as if again set forth at length, the First Count of this indictment, except the last three paragraphs thereof;

That James H. Collins, Sidney Fischgrund, Fred V. Gordon, John H. Morgan and Christopher E. Schirm, defendants as aforesaid, on or about the 21st day of September, 1939, in the Central Division of the Southern District of California, and within the jurisdiction of this Court, then having devised the scheme and artifice in said First Count described, for the purpose of executing the same, and attempting so to do, unlawfully, wilfully and feloniously did cause to be delivered by the United States mails, according to the direction thereon, a certain letter addressed to Mr. (Mrs.) Erlene B. Bates, 921 South Spaulding Avenue, Los Angeles, California, enclosed in a post paid envelope, which letter was substantially of the tenor following: [27]

R. R. Bray, President — J. H. Morgan, Secretary-Treasurer

UNION ASSOCIATED MINES COMPANY
Telephone Wasatch 2130

Suite 526 Utah Oil Bldg. — Salt Lake City, Utah
September 20, 1939

Mr. Erlene B. Bates
921 South Spaulding Ave.
Los Angeles, California

Dear Sir:

You have been sent your check on Certificates No.'s. 4040 to 4050. Of course, we can do nothing about your other seven certificates until they are in either your hands or ours.

We have heard nothing from Mr. Metcalf here at our office. If you could give us the names on the certificates and the numbers, of course there might be some way to check the matter satisfactorily.

Very truly yours,
Margaret Florence
Transfer Agent.

M-ff

[Written]: EBB.

Union Associated Mines Co.
526 Utah Oil Bldg.
Salt Lake City, Utah

[Stamped]: Salt Lake City 2 Utah Sep 20 1:30 PM 1939

[Canceled postage stamp]

Mr. Erlene B. Bates
921 South Spaulding Ave.
Los Angeles, California

[Written]: EBB.

That said person to whom said envelope was addressed then was one of said persons to be defrauded, all of which acts of the said defendants, and each of them, were against the peace and dignity of the United States and contrary to the form of the Statute of the same, in such case made and provided. (Title 18 U. S. C., Section 338) [28]

Eleventh Count

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that James H. Collins, Sidney Fischgrund, Fred V. Gordon, John H. Morgan and Christopher E. Schirm, defendants aforesaid, continuously, through the period of time extending from about the first day of June, 1938, to about the first day of December, 1939, at Los Angeles, California, in the Central Division of the Southern District of California, and within the jurisdiction of this Court, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed among themselves and with each other and with E. Byron Siens, J. A. Barclay, Arthur P. Adkisson and Guy B. Davis, not named herein as defendants, but as co-conspirators, and with other persons, whose names are to the Grand Jurors unknown, to commit certain offenses against the United States, to wit, to wilfully violate Section 17(a)(1) of Securities Act of 1933 (Section 77q(a)(1), Title 15 U. S. C.) and Section 215 of the Criminal Code of the United States (Section 338, Title 18, U. S. C.) and among such violations to commit the divers offenses charged against the said defendants in the First to Tenth Counts, inclusive, of this indictment, the allegations of which Counts, descriptive of the said defendants in the sale of the common stock of Union Associated Mines Company by the use of the United States mails, employing a

scheme and artifice to defraud, and of the connections of said defendants therewith, and descriptive of the defendants' use of the United States mails in furtherance of the said scheme as they had devised it, are hereby incorporated by reference to said First to Tenth Counts, inclusive, as if herein repeated, and each and all of said acts of each and all of the defendants so described in said First to Tenth Counts, inclusive, of this indictment are now here designated as overt acts of said defendants, done in pursuance of and to effect the objects of said conspiracy, and in addition thereto, the following named defendants and co-conspirators did and performed the following described separate overt acts, to wit: [29]

1. In pursuance of said conspiracy and to effect the objects thereof, Arthur P. Adkisson, at Los Angeles, California, on or about the 2nd day of September, 1938, affixed his signature to a certain agreement for the sale of the common stock of Union Associated Mines Company to A. A. Julian.

2. In pursuance of said conspiracy and to effect the objects thereof, Arthur P. Adkisson, at Los Angeles, California, on or about the 24th day of September, 1938, affixed his signature to a certain letter addressed to J. A. Barclay.

3. In pursuance of said conspiracy and to effect the objects thereof, defendant Gordon, at Los Angeles, California, on or about the 17th day of August, 1938, affixed his signature to Articles of Incorporation of Plymouth Oil Company.

4. In pursuance of said conspiracy and to effect the objects thereof, defendant Gordon, in October, 1938, called at 1400 Hillcrest Avenue, Pasadena, California, and conferred with certain of the persons to be defrauded.

5. In pursuance of said conspiracy and to effect the objects thereof, defendant Gordon, at Los Angeles, California, on or about the 3rd day of February, 1939, affixed his signature to a letter addressed to Grace T. Walker.

6. In pursuance of said conspiracy and to effect the objects thereof, defendant Gordon, at Tulsa, Oklahoma, on or about the 15th day of May, 1939, affixed his signature to a letter addressed to defendant Morgan.

7. In pursuance of said conspiracy and to effect the objects thereof, defendant Fischgrund, at Los Angeles, California, on or about the 17th day of August, 1938, affixed his signature to Articles of Incorporation of Plymouth Oil Company.

8. In pursuance of said conspiracy and to effect the objects thereof, defendant Fischgrund, at Los Angeles, California, on or about the 21st day of September, 1938, prepared an agreement to be executed [30] by officers of Plymouth Oil Company and Union Associated Mines Company, and signed such agreement as vice-president of Plymouth Oil Company.

9. In pursuance of said conspiracy and to effect the objects thereof, defendant Fischgrund, at Los Angeles, California, on or about the 18th day of May, 1939, affixed his signature to a letter addressed to the defendant Morgan.

10. In pursuance of said conspiracy and to effect the objects thereof, Guy B. Davis, at Los Angeles, California, on or about the 17th day of August, 1938, affixed his signature to Articles of Incorporation of Plymouth Oil Company.

11. In pursuance of said conspiracy and to effect the objects thereof, Guy B. Davis, at Los Angeles, California,

on or about the 6th day of February, 1939, affixed his signature to a letter addressed to Union Associated Mines Company.

12. In pursuance of said conspiracy and to effect the objects thereof, Guy B. Davis, at Los Angeles, California, on or about the 26th day of October, 1938, affixed his signature to check #37 of Plymouth Oil Company.

13. In pursuance of said conspiracy and to effect the objects thereof, defendant Schirm, at Los Angeles, California, on or about the 12th day of October, 1938, affixed his signature to a letter addressed to defendant Morgan.

14. In pursuance of said conspiracy and to effect the objects thereof, defendant Schirm, at Los Angeles, California, on or about the 13th day of October, 1938, affixed his signature to a letter addressed to defendant Morgan.

15. In pursuance of said conspiracy and to effect the objects thereof, defendant Collins, at Los Angeles, California, on or about the 17th day of January, 1939, affixed his signature to an agreement to purchase 1,000,000 shares of the common stock of Union Associated Mines Company from E. Byron Siens.

16. In pursuance of said conspiracy and to effect the objects [31] thereof, defendant Collins, on or about the 17th day of January, 1939, established an office with E. Byron Siens in a suite of offices known as 905 Foreman Building, Los Angeles, California.

17. In pursuance of said conspiracy and to effect the objects thereof, defendant Morgan, at Salt Lake City, Utah, on or about the 24th day of January, 1939, affixed his signature to a letter addressed to E. Byron Siens.

18. In pursuance of said conspiracy and to effect the objects thereof, defendant Morgan, at Salt Lake City, Utah, on or about the 15th day of May, 1939, affixed fixed his signature to a letter addressed to E. Byron Siens.

19. In pursuance of said conspiracy and to effect the objects thereof, defendant Morgan, at Los Angeles, California, on or about the 29th day of January, 1939, affixed his signature to the register of Hotel Clark, Los Angeles, California.

20. In pursuance of said conspiracy and to effect the objects thereof, defendant Morgan, at Los Angeles, California, on or about the 21st day of February, 1939, affixed his signature to the register of Hotel Clark, Los Angeles, California.

21. In pursuance of said conspiracy and to effect the objects thereof, defendant Morgan, at Salt Lake City, Utah, on or about the 15th day of May, 1939, affixed his signature to a letter addressed to the defendant Fischgrund.

22. In pursuance of said conspiracy and to effect the objects thereof, defendant Morgan, at Salt Lake City, Utah, on or about the 8th day of September, 1939, affixed his signature to a letter addressed to Arthur P. Adkisson.

23. In pursuance of said conspiracy and to effect the objects thereof, E. Byron Siens, at Los Angeles, California, on or about the 26th day of October, 1938, affixed his signature to a letter addressed to the defendant Morgan.

24. In pursuance of said conspiracy and to effect the objects [32] thereof, E. Byron Siens, at Los Angeles, California, on or about the 24th day of March, 1939, affixed his signature to a letter addressed to the defendant Morgan.

25. In pursuance of said conspiracy and to effect the objects thereof, J. A. Barclay, at Salt Lake City, Utah, on or about the 18th day of January, 1939, affixed his signature to a letter addressed to the defendant Collins.

26. In pursuance of said conspiracy and to effect the objects thereof, J. A. Barclay, at Salt Lake City, Utah, on or about the 11th day of February, 1939, affixed his signature to a letter addressed to the defendant Collins.

27. In pursuance of said conspiracy and to effect the objects thereof, J. A. Barclay, at Salt Lake City, Utah, on or about the 16th day of February, 1939, affixed his signature to a letter addresssed to the defendant Collins.

All of which acts of said defendants and each of them were and are contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America. (Title 18 U. S. C., Section 88)

Wm. Fleet Palmer
WILLIAM FLEET PALMER
United States Attorney

By: .....
Assistant United States Attorney

A true bill. N. W. Keller, Foreman.

[Endorsed]: Filed Feb. 4, 1942. [33]

In the District Court of the United States in and for the Southern District of California
Central Division

No. 15229

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. COLLINS, SIDNEY FISCHGRUND, FRED V. GORDON, JOHN H. MORGAN and CHRISTOPHER E. SCHIRM,

Defendants.

MOTION TO QUASH INDICTMENT

The defendant, Fred V. Gordon, hereby moves to quash the indictment heretofore found in the above entitled matter, and as a basis for the motion, respectfully shows:

I.

That the evidence adduced before the Grand Jury returning the indictment herein was insufficient and incompetent.

II.

That the evidence before the Grand Jury on the indictment herein was based on hearsay only and therefore was incompetent.

III.

That the indictment herein returned by the Grand Jury charges the defendant herein with two counts of violation of Sec. 77q of the Securities and Exchange Act, 8 counts of violation of the mail fraud statute, and one count of conspiracy to violate both the Securities and Exchange Act and the Mail Fraud statute; that there was no com-

petent evidence of any kind, or a scintilla thereof, before the Grand Jury, of the acts and things that constituted the gist of the offenses charged in Counts I to XI inclusive.

IV.

That there was no competent evidence or any evidence at all, except hearsay evidence, which is in itself incompetent evidence as [34] to the scheme or artifice to defraud, as alleged in Counts I to XI inclusive of the indictment.

V.

That the Grand Jury which returned the indictment herein was empanelled on February 4th, 1942, and on the same date, to wit, February 4th, 1942, the said Grand Jury, newly empanelled, returned seventeen (17) indictments; that by reason of the number of indictments returned, and by reason further of the length and scope of the indictment herein which consists of 32 typewritten pages, and which consists of eleven counts alleging acts, among other things, of stock market manipulations, rigging of markets, technical inter-corporate transactions, technical information in reference to oil production and representations made thereof, and other matters of like scope, it would be a physical impossibility for a grand jury to have heard other than the mere ex-parte statement of a public official detailing matters gleaned from an investigating report.

VI.

That the said defendant, Fred V. Gordon, has the constitutional right to determine what transpired before the grand jury so that his individual constitutional rights may be safeguarded, and he is entitled to inspect and examine the minutes of the grand jury in furtherance

of his motion herein to quash the indictment, and to call as witnesses on his behalf, Russell K. Lambeau, Assistant United States District Attorney, and James M. Evans, investigator for the Securities and Exchange *Division* of the United States.

VII.

Attached hereto, marked Exhibit "A", and by reference made a part hereof, is the affidavit of Ben L. Blue, in support of said motion.

Wherefore, said defendant, Fred V. Gordon, prays that his motion to quash the indictment herein be granted and that the indictment herein be dismissed and set aside, or in the [35] alternative that the defendant herein, Fred V. Gordon, be permitted to inspect and examine the minutes of the Grand Jury in furtherance of his motion to quash the indictment, and call as witnesses on his behalf, Russell K. Lambeau, Assistant United States District Attorney, and James M. Evans, Investigator for the Securities and Exchange *Division* of the United States.

BEN L. BLUE

Attorney for Defendant, Fred V. Gordon [36]

EXHIBIT "A"

[Title of District Court and Cause.]

AFFIDAVIT OF BEN L. BLUE IN SUPPORT OF MOTION TO QUASH INDICTMENT

State of California

County of Los Angeles—ss.:

Ben L. Blue, being first duly sworn, deposes and says:

That he is attorney for Fred V. Gordon, one of the defendants herein; that Fred V. Gordon was indicted by the grand jury on February 4th, 1942, charged in said indictment with two counts of violating Sec. 77q of the

Securities and Exchange Act, eight counts of violating the mail fraud statutes, to wit, Title 18, United States Code, Sec. 338, and one count of violating the conspiracy statute; that said grand jury was duly empanelled for the February Term on February 4th, 1942; that immediately after the empanelment of said grand jury, various matters were brought to its attention by the United States District Attorney's Office, and on February 4th, 1942, the said grand jury, newly empanelled, returned seventeen (17) indictments; that among the 17 indictments so returned was the indictment of the defendant in the above entitled cause.

That said indictment consists of 32 typewritten pages and charges the defendants with operating a fraudulent stock market manipulation consisting of rigging markets and manipulating the price of a stock listed on the Salt Lake Stock Exchange; said indictment also charged the defendants with having acquired certain [37] interests in oil companies operating in Los Angeles County for the benefit of the corporation whose stock was allegedly manipulated on said Exchange; said indictment also charged definite misrepresentations as to the assets of the corporations named in the indictment, as to the contemplated payment of the dividend, as to the contemplated increase in price of stock on the so-called manipulated market, and a great many other representations which are more fully set forth in said indictment, and that in furtherance of said acts, the defendant utilized the United States mails to complete the alleged scheme and artifice;

Said indictment further named certain persons who were defrauded by the defendant; that the indictment further sets forth certain letters which are alleged to have been forwarded through the United States mails to certain witnesses by the defendant;

That affiant, basing his allegation on information and belief, alleges that no witnesses appeared before the grand jury to testify in the above entitled matter except James M. Evans and Russell K. Lambeau; that James M. Evans is an investigator employed by the Securities and Exchange Commission and Russell K. Lambeau is an Assistant United States District Attorney attached to the Southern District of California;

Affiant further alleges on information and belief that the only evidence given before said grand jury in reference to the above indictment were ex-parte hearsay statements of said James M. Evans and Russell K. Lambeau, and that said evidence as given by said James M. Evans and Russell K. Lambeau was incompetent, hearsay, and therefore no evidence at all;

Affiant further alleges that said allegation on information and belief is based on the fact that it would be a physical impossibility to hear sufficient competent evidence to justify the allegations in the indictment by reason of the fact that on the same day, seventeen indictments were returned, including the [38] present one.

The within affidavit is made in support of the motion to quash the indictment herein.

BEN L. BLUE

Subscribed and sworn to before me this 25th day of February, 1942.

(Seal) ZOA L. ZACCHE

Notary Public in and for the County of Los Angeles, State of California.

Received copy of the within Motion to Quash this 26 day of February, 1942. Edward H. Law, Attorney for Plaintiff.

[Endorsed]: Filed Feb. 26, 1942. [39]

[Title of District Court and Cause.]

MOTION TO QUASH INDICTMENT

The defendant Sidney Fischgrund, hereby moves to quash the indictment heretofore found in the above entitled matter, and as a basis for the motion, respectfully shows:

I.

That the evidence adduced before the Grand Jury returning the indictment herein, was insufficient and incompetent.

II.

That the evidence before the Grand Jury on the indictment herein, was based on hearsay only, and therefore was incompetent.

III.

That the indictment herein returned by the Grand Jury, charges the defendant herein with two counts of violation of Section 77q of the Securities and Exchange Act, 8 counts of violation of the mail fraud statute, and one count of conspiracy to violate both the Securities and Exchange Act and the Mail Fraud statute; that there was no competent evidence of any kind, or a scintilla thereof, before the Grand Jury, of the acts and things that constituted the gist of the offenses charged in Counts I to XI inclusive. [40]

IV.

That there was no competent evidence or any evidence at all, except hearsay evidence, which is in itself incompetent evidence as to the scheme or artifice to defraud, as alleged in Counts I to XI inclusive, of the indictment.

V.

That the Grand Jury which returned the indictment herein, was empanelled on February 4th, 1942, and on the same date, to wit, February 4th, 1942, the said Grand Jury, newly empanelled, returned seventeen (17) indictments; that by reason of the number of indictments returned, and by reason further of the length and scope of the indictment herein, which consists of 32 typewritten pages, and which consists of eleven counts, alleging acts, among other things, of stock market manipulations, rigging of markets, technical intercorporate transactions, technical information in reference to oil production and representations made thereof, and other matters of like scope, it would be a physical impossibility for a grand jury to have heard other than the mere ex-parte statement of a public official detailing matters gleaned from an investigating report.

VI.

That the said defendant, Sidney Fischgrund, has the constitutional right to determine what transpired before the Grand Jury so that his individual constitutional rights may be safeguarded, and he is entitled to inspect and examine the minutes of the Grand Jury in furtherance of his motion herein to quash the indictment, and to call as witnesses on his behalf, Russell K. Lambeau, Assistant United States District Attorney, and James M. Evans, investigator for the Securities and Exchange *Division* of the United States.

VII.

This motion to quash indictment is made on behalf of [41] Sidney Fischgrund, one of the defendants named herein; that there has been filed simultaneously a similar

motion to quash indictment on behalf of Fred V. Gordon, a co-defendant; that as a part of said motion to quash indictment filed on behalf of Fred V. Gordon, there has been filed as Exhibit "A" thereto the affidavit of Ben L. Blue, attorney of record for Fred V. Gordon; and in addition thereto, "Brief in Support of Motion to Quash Indictment of Fred V. Gordon." Reference is made to said affidavit of Ben L. Blue and said "Brief in Support of Motion to Quash Indictment of Fred V. Gordon," and the same and each of them are by reference made a part of the motion herein filed on behalf of the defendant, Sidney Fischgrund.

Wherefore, said defendant, Sidney Fischgrund, prays that his motion to quash the indictment herein be granted, and that the indictment herein be dismissed and set aside, or in the alternative, that the defendant herein, Sidney Fischgrund, be permitted to inspect and examine the minutes of the Grand Jury in furtherance of his motion to quash the indictment, and call as witnesses on his behalf, Russell K. Lambeau, Assistant United States District Attorney, and James M. Evans, Investigator for the Securities and Exchange *Division* of the United States.

HARRY GRAHAM BALTER

Attorney for Defendant, Sidney Fischgrund

Received copy of the within Motion to Quash this 2nd day of March, 1942. Wm. Fleet Palmer, U. S. Atty.; R. K. Lambeau, Ass't. U. S. Atty.

[Endorsed]: Filed Mar. 2, 1942. [42]

[Minutes: Monday, March 2, 1942]

Present: The Honorable Harry A. Hollzer, District Judge.

This cause coming on for arraignment and plea of defendant John H. Morgan, plea of defendants Collins, Fischgrund, and Schirm, and for hearing motion of defendant Fred V. Gordon to quash indictment; R. K. Lambeau, Assistant U. S. Attorney, appearing as counsel for the Government; David H. Cannon, Esq., appearing as counsel for Defendant Morgan; Chas. H. Heustis, Esq., appearing as counsel for Defendant Collins; Ben L. Blue, Esq., appearing as counsel for Defendants Schirm and Gordon; Harry G. Balter, Esq., attorney for Defendant Fischgrund being abent; all of the said defendants being present; and A. Wahlberg, Court Reporter, being present and reporting the proceedings:

Attorney Cannon in behalf of Defendant Morgan waives reading of the Indictment and enters plea of not guilty to all eleven counts. It is ordered that Defendant Morgan have thirty days in which to withdraw his plea for the purpose of entering a different plea.

Attorney Blue states that Defendant Schirm wishes to join in motion of Defendant Gordon to quash indictment and that Attorney Balter, counsel for Defendant Fischgrund, has asked him to advise the Court that Defendant Fischgrund wishes to join in said motion, and it is so ordered, and it is further ordered that hearing on said motion is continued hereby to March 12, 1942, at 10 A. M. and continued hereby to March 16, 1942, at 2 P. M. for assignment and setting as to Defendant Morgan and for plea of remaining defendants. [43]

[Minutes: Monday, March 16, 1942]

Present: The Honorable Harry A. Hollzer, District Judge.

This cause coming on for (1) decision on motion to quash indictment of Defendants Gordon, Fischgrund, and Schirm; (2) plea of Defendants Collins, Fischgrund, Schirm, and Gordon; and for assignment and setting for trial as to Defendant Morgan; R. K. Lambeau, Assistant U. S. Attorney, appearing as counsel for the Government; Chas. H. Heustis, Esq., appearing as counsel for Defendant Collins; Harry G. Balter, Esq., appearing as counsel for Defendant Fischgrund for purpose of plea only; Ben L. Blue, Esq., appearing as counsel for Defendants Gordon and Schirm, and also in place of David H. Cannon, Esq., as counsel for Defendant Morgan; and Arthur Edwards, Court Reporter, being present and reporting the proceedings:

It is ordered that motion to quash be and it hereby is, denied and exception noted to moving defendants. Defendants Collins, Fischgrund, Schirm, and Gordon waive reading of the Indictment, and each enters plea of not guilty to all eleven counts.

It is ordered that the cause be referred to Judge McCormick forthwith for assignment and setting. [44]

[Title of District Court and Cause.]

MOTION TO DISMISS

Now Come the defendants above named and move the court to dismiss the indictment heretofore found against them and as grounds for said motion, said defendants allege as follows:

I.

That the constitutional rights of the defendants as granted to them by Amendment 6 of the Constitution of the United States, have been denied in that they have not enjoyed the right to a speedy trial.

II.

That these defendants were indicted on February 4, 1942, and said indictment contained eleven counts, two counts of which charged them with violation of Section 77q (a) (1), Title 15, U. S. C., eight counts of violation of Title 18, U. S. C., Section 338 (mail fraud), and one count of conspiracy to violate each of the sections above enumerated. They were duly arraigned and other proceedings taken as appears more definitely from the chronological table attached hereto, marked Exhibit "A", and by reference made a part hereof.

III.

The indictment charges that the defendants, commencing in 1938 and ending in 1939, committed the acts set forth.

IV.

The cause was set for trial before the Honorable Benjamin [45] Harrison, District Judge, for June 4, 1942, at which time all of the defendants were present in person and represented by their attorneys ready for trial.

At said time, H. V. Calverley, Assistant United States Attorney, appearing as counsel for the government, addressed the court and stated that he had written for authority from the Attorney General to dismiss the case by reason of the fact that his examination of the files, records, statements, convinced him that there was not sufficient evidence to convict and that justice would be served by a dismissal. The court thereupon continued the cause for the term for setting.

V.

Thereafter, said cause was continued from term to term, to wit: from the September term of 1942 to the February term of 1943; and in the September term of 1943, said cause was continued until October 18, 1943, for the purpose of setting for trial, at which date it was continued again for the term. On February 7, 1944, on which day the February term calendar was called, the case was set for trial for April 18, 1944, and on March 13, 1944, on the court's own motion, it was ordered that the order setting the cause for trial for April 18, 1944, be vacated, and the cause was transferred to Presiding Judge Paul J. McCormick for re-assignment. The latter motion and order was made without the appearance or consent of the defendants. Thereafter, in the courtroom of Judge Harry Hollzer, the matter was set for July 5, 1944, and Judge Dave W. Ling of Arizona was assigned as Trial Judge.

VI.

By reason of the delay, through no fault of the defendants and for no valid reason on the part of the plaintiff, these defendants have been deprived of the right to subpoena certain witnesses in their defense, as will more fully appear from the affidavit of Fred V.

Gordon, one of the defendants herein, which affidavit is attached hereto, marked Exhibit "B", and by reference made a part [46] hereof.

VII.

The defendant, James H. Collins, by reason of the delay, has been placed in the position of not being in possession of necessary documentary evidence which was entrusted by him with his former attorney, Charles H. Heustis, as will more fully appear by the affidavit of James H. Collins, which affidavit is hereto attached, marked Exhibit "C", and by reference made a part hereof.

The defendant Collins did at the time of his arrest, consult with and retain Charles H. Heustis, an attorney-at-law, with offices at Los Angeles, California, and did turn over to said Heustis all of his files, records, documents, letters, papers, notes, and all matters relevant to his association in the enterprise described in the indictment. Subsequently, said Heustis was inducted into the United States Army, and as will more fully appear from the affidavit, every effort has been made to obtain from Heustis the files deposited with him by Collins. That the defendant Collins, if compelled to go to trial, will be in no position to properly defend himself by reason of the absence of his records and by reason of the fact that he has been denied a speedy trial.

VIII.

Attached hereto, marked Exhibit "D", and by reference made a part hereof, is a replica of three minute orders of the court dated respectively June 4, 1942, September 13, 1943 and March 13, 1944.

IX.

Attached hereto, and by reference made a part hereof, is an affidavit of Sidney Fischgrund, marked Exhibit "E".

X.

Attached hereto, and by reference made a part hereof, is an affidavit of Thomas Morris, attorney for James H. Collins, and marked Exhibit "F".

XI.

Attached hereto also are Points and Authorities in support of the motion herein made. [47]

Wherefore, defendants pray that they be hence dismissed on the grounds that their constitutional rights have been violated.

DAVID H. CANNON
Attorney for John H. Morgan

THOMAS MORRIS
Attorney for James H. Collins

SIDNEY FISCHGRUND
In Pro Per

BEN L. BLUE
Attorney for Fred V. Gordon and Christopher E. Schirm [48]

EXHIBIT "A"

United States of America vs. Collins, et al.

No. 15229

Proceedings as taken from register in the above-entitled action:

February 4, 1942 —Entered order filing indictment.

February 5, 1942 —Appearance of defendants.

March 16, 1942 —Entered order setting cause *of* trial with jury June 9, 1942.

May 5, 1942 —Entered order resetting and advancing trial from June 9, 1942, to June 4, 1942.

June 4, 1942 —Entered order continuing for term for setting trial. United States Attorney stated, "Application for authorization to dismiss has been made to Attorney General."

September 14, 1942—Entered proceedings and order striking from calendar for setting for trial.

September 13, 1943—Entered proceedings and order continuing to October 11, 1943, 10 A. M., for setting trial.

October 18, 1943 —Entered order continuing term for setting for trial.

February 7, 1944 —Entered proceedings and order setting for trial April 18, 1944, 10 A. M.

March 13, 1944 —Entered order vacating trial date April 18, 1944, and transferring to Judge McCormick for re-assignment. Order entered transferring cause to division of Judge Hollzer for all further proceedings.

March 20, 1944 —Entered order continued to April 3, 1944, 10 A. M. for setting.

April 3, 1944 —Entered order for trial for July 5, 1944, 10 A. M. before Judge Ling. [49]

EXHIBIT "B"

[Title of District Court and Cause.]

AFFIDAVIT OF FRED V. GORDON IN SUPPORT OF MOTION FOR DISMISSAL

State of California
County of Los Angeles—ss.:

Fred V. Gordon, being first duly sworn, deposes and says:

That he is one of the defendants in the above entitled cause; that as necessary witnesses for his proper defense, it was his intention to cause to have subpoenaed and testify on his behalf, M. H. Soyster, Christian Vrang and W. S. Milliner.

That M. H. Soyster is a Petroleum Engineer and if called to testify would have qualified as a Petroleum Engineer and Geologist, and particularly in reference to the Torrance Oil field. That the Plymouth Oil Company, of which affiant was president, drilled three wells in said

Torrance oil field on the recommendation of M. H. Soyster.

That Christian Vrang, if called upon to testify would have testified that he was a Petroleum Geologist and Engineer; that he recommended to the Plymouth Oil Company that it acquire 10 parcels of property in what was known as the Factory Center Tract west of the Torrance field.

That W. S. Milliner was the lessee of a certain oil and gas lease comprising 40 acres, in which lease affiant was one of the [50] lessors; that said 40 acres were located in Kern County, California; that subsequently, said 40 acre lease was assigned to Union Associated Mines Company and on information and belief, affiant alleges that said Milliner received 235,000 shares of Union Associated Mines Company stock for said assignment.

That all of the facts and circumstances regarding the assignment of the lease from Milliner to Union Associated Mines are only within the knowledge of said Milliner, and said Milliner is a necessary witness for affiant's proper defense.

That said Milliner, Soyster and Vrang, during the year 1942, were residents of Southern California; that since June 1942, Christian Vrang, M. H. Soyster and W. S. Milliner are unavailable to the defendant for the service of subpoenas to appear on his behalf at the trial of this cause.

Christian Vrang is in the armed services of the United States government with his actual whereabouts unknown to affiant.

W. S. Milliner is, according to the information of affiant, in the United States Navy, destination unknown.

Your affiant has mailed several letters to Milliner since

June 1942, to Milliner's last known address at San Diego, California, and all such mail has been returned to your affiant.

Affiant has attempted to locate*d* M. H. Soyster in the County of Los Angeles, but has not been able to do so and affiant alleges on information and belief that M. H. Soyster is connected with the United States Geological Survey working out of Roswell, New Mexico.

By reason of the delay in time in setting the cause for trial, the witnesses above enumerated, necessary for the proper defense of the defendant, are unavailable for him in his defense.

FRED V. GORDON

Subscribed and sworn to before me this 28th day of June, 1944.

(Seal) ZOA L. ZACCHE

Notary Public in and for the County of Los Angeles, State of California [51]

EXHIBIT "C"

[Title of District Court and Cause.]

AFFIDAVIT OF JAMES H. COLLINS IN SUPPORT OF MOTION FOR DISMISSAL

State of California
County of Los Angeles—ss.:

James H. Collins, being first duly sworn, deposes and says:

That he is one of the defendants in the above titled cause; that at the time that he was indicted in February, 1942, he retained as his attorney, Charles H. Heus-

tis to represent him during the proceedings herein contemplated; that at the time that he retained said Heustis, affiant did turn over to said Heustis all of his files in reference to affiant's connection with the matter wherein he has been indicted, said files containing all of his correspondence, contracts, records of sales and purchases, confirmations of sale and purchase, showing the course of his conduct in full detail at all times.

That affiant was present in court on June 4, 1942, and his attorney was present with him, which date was the date set for the trial of the above titled cause, and at said time and place, H. V. Calverley, Assistant United States Attorney, stated that it was his desire to dismiss the case and that he had written for authority from the Attorney General to dismiss; that thereupon, his attorney Heustis, told affiant that affiant had nothing to worry about and [52] that the case would never be brought to trial, and affiant did not attempt to contact his attorney until sometime in October, 1943, at which time he was notified that the case would be heard in the courtroom of Judge Benjamin Harrison on October 18, 1943, for the purpose of setting it for trial.

Affiant attempted to find Heustis thereafter and contacted his office and was informed that Mr. Heustis had left the office and left no forwarding address. Affiant thereupon contacted the State Bar of California and a representative of the State Bar informed affiant that Mr. Heustis resided at 3411½ Larga Street, Los Angeles, California; that affiant found at that address the wife of Mr. Heustis and Mrs. Heustis told affiant at that time that Heustis was in the United States Army and gave to affiant his forwarding address; that his address at that time was at Fort Custer, Michigan; that affiant immediately addressed a letter to Heustis at the address

given to him by Mrs. Heustis, and thereafter, in March, 1944, affiant received a reply to his letter wherein Heustis stated that he, Heustis, would have his file forwarded to him and that he would extract from said file certain personal correspondence and matters that were still in the file and that after extracting his personal correspondence and other documents that had no relevance to the file, he would forward the file to affiant.

That affiant has not heard from Heustis since that time; that in the letter that affiant addressed to Heustis, he stated to Heustis that the case was going to be set for trial and that it would be necessary for him to retain another lawyer and it was also necessary for the lawyer succeeding Heustis to familiarize himself with the facts as exemplified by the documentary evidence in the possession of Heustis.

That by reason of the delay of the trial, your affiant has been deprived and is now deprived of documents and evidence necessary for his defense. [53]

That if affiant had not been lulled into a sense of security by reason of the statement made by the Assistant United States Attorney on June 4, 1942, to the effect that the case would be dismissed, and the statement of his then counsel, Heustis, to the effect that he would never be tried, he would have been able to avail himself of the evidence and also avail himself of the processes of this court. By reason of this delay, he has been denied the opportunity.

Wherefore, affiant prays that the petition to dismiss be granted.

JAMES H. COLLINS

Subscribed and sworn to before me this 28th day of June, 1944.

(Seal) ZOA L. ZACCHE

Notary Public in and for the County of Los Angeles, State of California [54]

EXHIBIT "D"

[Minutes: Thursday, June 4, 1942]

Present: The Honorable Benjamin Harrison, District Judge.

This cause coming on for trial of defendants James H. Collins, Sidney Fischgrund, Fred V. Gordon, John H. Morgan, and Christopher E. Schirm; H. V. Calverley, Assistant U. S. Attorney, appearing as counsel for the Government; Chas. H. Heustis, Esq., appearing as counsel for Defendant Collins; Ben Blue, Esq., appearing as counsel for Defendants Schirm and Gordon; Sidney Fischgrund, Esq., defendant, being present in propria persona; and David H. Cannon, Esq., appearing as counsel for Defendant Morgan; all of the said defendants being present; and Mack Racklin, Court Reporter, being present and reporting the proceedings:

Attorney Calverley moves for a continuance of this case and states that he has written for authority from the Attorney General to dismiss the case.

Attorney Cannon makes a statement and Attorney Blue makes a statement.

It is ordered that the cause be, and it hereby is, continued for the Term for setting for trial. [55]

EXHIBIT "D"

[Minutes: Monday, September 13, 1943]

Present: The Honorable Ben Harrison, District Judge.

This cause coming on for setting for trial of the defendants herein; C. H. Carr, Esq., United States Attorney, appearing for the Government; Attorney Carr makes a statement, and it is ordered that this cause, be and it hereby is, continued four weeks at 10 A. M. for setting for trial. [56]

EXHIBIT "D"

[Minutes: Monday, March 13, 1944]

Present: The Honorable Ben Harrison, District Judge.

On the Court's own motion, it is hereby ordered that the order setting this cause for trial April 18, 1944, at 10 A. M. is vacated, and the cause is ordered transferred to Judge McCormick for re-assignment. [57]

EXHIBIT "E"

[Title of District Court and Cause.]

AFFIDAVIT OF SIDNEY FISCHGRUND IN SUPPORT OF MOTION FOR DISMISSAL UNDER UNITED STATES CONSTITUTION, ARTICLE VI.

State of California
County of Los Angeles—ss.

Sidney Fischgrund, being first duly sworn, deposes and says:

That on February 4, 1942, an order was entered in the above-entitled matter for filing an indictment against this affiant and the other defendants named in the above-entitled action;

That on February 5, 1942, this affiant surrendered himself to the United States Marshal and was released by the Court on his own recognizance;

That on March 16, 1942, the above-entitled action was set for trial for June 9, 1942;

That on May 5, 1942, an order was entered resetting and advancing the trial date from June 9, 1942, to June 4, 1942;

That on June 4, 1942, when the defendants were ready for [58] trial, the United States Attorney stated that the United States Government would move for a dismissal of the action, and had filed application for authorization to the United States Attorney General, and that he believed the action would be dismissed because there was insufficient evidence to justify the prosecution of this action, and that he requested a continuance for the term;

That on September 13, 1942, an order was entered striking the action from the calendar for setting;

That on September 13, 1943, (one year from the previous date) an order was entered continuing the above-entitled action for setting to October 11, 1943;

That on October 18, 1943, an order was entered continuing the setting of the above-entitled action for the term;

That on February 7, 1944, and order was entered setting the above-entitled action for trial on April 18, 1944;

That on March 13, 1944, an order was entered vacating the trial set on April 18, 1944, and transferring the case to Judge McCormick for re-assignment. Thereafter, an order was entered transferring the cause to Judge Hollzer for further proceedings;

That on March 20, 1944, an order was entered continuing the case to April 3, 1944, for setting;

That on April 3, 1944; an order was entered setting the case for trial for July 5, 1944.

From the foregoing, it appears that the criminal prosecution was suspended over this affiant and the other defendants for almost two and one-half years, and that during that period of time this affiant and the other defendants constantly were under oppression, anxiety and harassment.

That at the time the indictment was filed, the prosecution was ready for trial inasmuch as at that time it had accumulated all of the facts, obtained statements from all of the witnesses, [59] obtained the Exhibits which it now possesses, and that the prosecution could have been ready for trial within sixty days. That this affiant was ready for trial on June 4, 1942, when the action was first set for trial.

That this action has been delayed merely because of the whim and caprice of the attorneys for the Securities and Exchange Commission, who have resisted the dismissal of this action from the very beginning, and if said attorneys for the Securities and Exchange Commission knew that the above-entitled action would not be dismissed because of their insistence that the case be brought to trial, it was their duty to the Court and to the defendants to advise the Court and *that* defendants that no dismissal would be approved or authorized, in order not to lull the defendants into a false sense of security.

That the acts of which this affiant and the other defendants are accused, are alleged to have taken place between June, 1938, and December, 1939, which is almost

six years ago, and it is impossible for this affiant to now remember all of the facts and circumstances surrounding the numerous transactions which took place in his office five and six years ago.

That prior to the last continuance, the Honorable Ben Harrison, Judge Presiding in the above-entitled Court, stated to the United States Attorney, "This case has been bandied around on the calendar, and if there is any reason this case is not going to be tried at that time—why, it is going to be tried at that time or will be disposed of by the Court."

That after the foregoing statement was made by the Court, the above-entitled action was continued twice, and this affiant objected to the continuance and stated to the Court that he objected to the continuance; nevertheless, over the objections of this affiant, the cause was continued.

That this affiant has been deferred from military service [60] in the Army of the United States Government because of the pendency of this above-entitled action; that although this affiant has endeavored to join the United States Navy, he has been precluded from serving his country. That this affiant will be 38 years of age on August 16, 1944, and because of his age, he will be prevented and precluded from serving in the armed services of the United States Government after that date, while he is informed and believes that if he can enlist in the armed services of the United States prior to August 16, 1944, he will be accepted.

Wherefore, this affiant respectfully prays that his motion to dismiss the indictment and complaint filed in the above-entitled cause be granted on the ground that he

has been denied a speedy trial as guaranteed to him by the Sixth Amendment to the Federal Constitution.

SIDNEY FISCHGRUND
Affiant

Subscribed and sworn to before me this 28th day of June, 1944.

(Seal) WILLIAM R. LAW
Notary Public in and for the County of Los Angeles, State of California [61]

EXHIBIT "F"

[Title of District Court and Cause.]

AFFIDAVIT OF THOMAS MORRIS

State of California
County of Los Angeles—ss.

Thomas Morris, being first duly sworn on oath, deposes and says:

That on or about the 17th day of April, 1944, he made an appearance as attorney for defendant, James Collins, one of the defendants in the above cause, and prior thereto had no knowledge or information of the matters set forth in the indictment nor the defense of said defendant thereto.

That prior to said date, said defendant had been represented in the above cause by C. H. *Hu*stis, an attorney at law duly licensed to practice in the above court; that said *Hu*stis had, sometime previous to said date, been inducted into the armed forces of the United States. [62]

That James Collins informed affiant that all his files, records, papers and memoranda pertaining to the defense

in the above action had been handed to and were in the possession of said *Hu*stis.

That thereafter and on the 9th day of May, 1944, your affiant addressed a letter to the said *Hu*stis, a copy of which is attached hereto, marked Exhibit A, which letter was not returned to affiant.

That thereafter and on or about the 6th day of May, 1944, your affiant addressed a letter to the said *Hu*stis, a copy of which is attached hereto, marked Exhibit B, which said letter was registered with return receipt requested and said return receipt is attached to Exhibit B.

That on the 7th day of June, 1944, your affiant addressed a letter to the wife of said *Hu*stis, Mrs. C. H. *Hu*stis, at 3411½ Larga Street, California, a copy of which said letter is attached hereto, marked Exhibit C, which said letter was not returned to affiant.

That your affiant received no reply to any of said letters.

That on or about 22nd day of June, 1944, your affiant received a letter from Charles H. *Hu*stis, postmarked Greenville, Pennsylvania, stating in substance that he had not received any of the letters from affiant but inferring that he received the last letter written to him by affiant, and stating therein that James Collins was indebted to him, *Hu*stis, and that he had written Collins telling him that he "could have the file ready for him in several weeks time, as there were other papers in the file which had to be taken out—This will involve being done by remote control with time and trouble involved. I have assumed that this matter had been dismissed as to Collins so the file I placed with my dead files." He stated that he hoped Collins would get a certain sum of money started on its way to him and he would see to [63] his file.

That the inference contained in said letter is that he would not see to said file getting to Collins unless said sum of money was forthcoming. That Collins has advised your affiant that he is not indebted to *Hu*stis in any sum of money whatsoever.

That by reason of the delay in said correspondence and the failure of your affiant to receive the file, your affiant has been unable to avail himself of any of the files, records, papers, and memoranda pertaining to the defense in the above action and for these, and the reasons stated in the Motion to Dismiss herein, your affiant is wholly unable to prepare the defense of the defendant, Collins.

THOMAS MORRIS
Affiant

Subscribed and sworn to before me this 28th day of June, 1944.

(Seal) TEMPA CURRIE
Notary Public in and for said County and State.
My Commission expires June 8, 1947. [64]

Exhibit A

May 9, 1944.

Private C. H. *Hu*stis,
No. 39712848, Army Service Forces,
Sixth Service Command,
Company D, 28th Batt., 1671st S. U.,
Fort Custer, Michigan.

Dear Sir:

Mr. James Collins has asked me to write you for the papers and documents relating to the federal action in which you formerly represented him.

The case is set for July 5th and I have appeared of record and I am, of course, becoming anxious to see the file and familiarize myself with the case.

I would deeply appreciate your seeing to it that these papers are forwarded to me at the first possible moment. I would also appreciate anything you can tell me about the case.

Very truly yours,
THOMAS MORRIS.

TM:TC [65]

Exhibit B

June 6, 1944.

Private C. H. *Hu*stis,
No. 39712848, Army Service Forces,
Sixth Service Command, Company D,
28th Battalion, 1671st S. U.,
Fort Custer, Michigan.

Dear Mr. *Hu*stis:

Mr. James Collins, whom you formerly represented in the matter in which he was indicted, and I have both written you on previous occasions seeking your co-operation in locating his files and papers which were in your possession at the time you closed your office. Mr. Collins tells me that you have all the papers and that he has none which would be of assistance to me in preparing his defense for the trial which is now set for July 5th, 1944.

I have practically no knowledge or information of the facts in the case and especially of those which might be deduced from his papers, and will be completely without resources to defend him unless these are made available to me by you, and, even at this late date, you can appre-

ciate that with the problem of carrying on my legal practice, it will be a most onerous task to prepare myself to defend Jim.

We have not heard from you and both of us appreciate that you are, perhaps, placed in some position which renders it exceedingly difficult for you to comply with our request and, also, that this matter is by this time, perhaps, far removed from the sphere of your activity.

I am sure you appreciate the urgent necessity which prompts my request for these files and we will deeply appreciate getting some response from you and, of course, the files, at the earliest possible moment. [66]

Very truly yours,

THOMAS MORRIS.

TM:TC

— — — — — — — — —

Post Office Department
Official Business

Penalty for private use to avoid payment of postage, $300.

Postmark of Delivering Office
2 Battle Creek Mich.
Jun 10
9:30 PM
1944

Return to Thomas Morris Atty
Street and Number,)
of Post Office Box,) 412 W. 6th
Registered Article Los Angeles, 14
No. 228169 California.
Insured Parcel
No.

— — — — — — — — —

Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. C. H. *Hu*stis
   (Signature or name of addressee)
2. Cpl Jack Mahler
   (Signature of addressee's Agent—Agent should enter addressee's name on line One above)

Date of Delivery Jun 10 1944, *194....* [67]

Exhibit C

June 7, 1944.

Mrs. C. H. *Hu*stis,
3411½ Larga Street,
Los Angeles, California.

Dear Mrs. *Hu*stis:

Recently I was substituted as attorney for James Collins in an action pending against him in the federal court in which proceeding he was formerly represented by your husband. Mr. Collins has been endeavoring to procure the file which was in your husband's possession at the time he entered the army, and among other things, he has endeavored to telephone you on several occasions at Normandie 18758 and informs me that he has been unable to reach you. We have written to your husband at the following address,

Private C. H. *Hu*stis,
No. 39712848, Army Service Forces,
Sixth Service Command,
Company D, 28th Batt., 1671st S. U.,
Fort Custer, Michigan,

but have not had a reply from him although our letters have not been returned. If you have another and more recent address than the one above, we would appreciate very much your communicating it to us.

We would also appreciate any assistance you could give us in the matter of locating the file and respectfully request that you telephone me at the office at TRinity 0457 immediately upon receipt of this letter.

Very truly yours,

THOMAS MORRIS.

TM:TC [68]

[Title of District Court and Cause.]

POINTS AND AUTHORITIES

Amendment Six of the Constitution of the United States reads as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial * * *"

The wording of the Sixth Amendment is clear and implicit. The question is, what is a speedy trial. Congress has not in its legislative actions set forth a definite time limitation so that the question of what a speedy trial constitutes must be determined by what is reasonable and by precepts of example and by what other legislative bodies have determined constitute a time limit within which to bring defendants to trial.

The legislature of the states of California and Arizona have determined that unless a defendant is brought to trial within sixty days after an indictment or information has been found, that the defendant must be dismissed.

In the case of Harris v. Municipal Court, 209 Cal. 55, the court says:

> "Section 13 of article I of the Constitution of California provides in part as follows: 'In criminal prosecutions, in any court whatever, the party accused shall have the right to a [69] speedy and public trial.' This provision of the Constitution is self-executing. (In re Alpine, 203 Cal. 731 (58 A. L. R. 1500, 265 Pac. 828); In re Begerow, 133 Cal. 349 (85 Am. St. Rep. 178, 56 L. R. A. 513, 65 Pac. 828). It reflects the letter and spirit of the following provision of the federal Constitution to the same effect: 'In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial . . .' (U. S. Const., art. VI, sec. 1.) This is a fundamental right granted to the accused and has been the policy of the law since the time of the promulgation of Magna Charta and the Habeas Corpus Act. (In re Begerowa, supra.) The policy of the law in this respect has been further declared by the legislature and by constitutional amendment in this state. * * *"
>
> ". . . It will thus be seen that the time within which criminal cases should be disposed of has been and is a matter of great public concern, and the duty is imposed upon courts, judicial officers and public prosecutors, to expedite the disposition thereof.
>
> "What is a 'speedy trial,' as those words are used in the Constitution? The legislature in section 1382 of the Penal Code has declared that unless a defendant in a felony case has been brought to trial within sixty days after the finding of the indictment or the filing of the information, the court must, in the absence of good cause shown for the delay, dismiss the

prosecution. Thus the legislature by necessary inference has said that a trial delayed more than sixty days without good cause is not a speedy trial, and the courts have not hesitated to adopt and enforce the legislative interpretation of the constitutional provision."

It is true that there are several United States Circuit Court cases, particularly the case of Phillips v. United States, 201 Fed. [70] 259, and Worthington v. United States, 1 Fed. (2d) 154, which hold that in order for a defendant to avail himself of the right given under Amendment VI, that it is incumbent upon him to demand a trial and if he does not do so, that then he waives the right. That theory does not apply in the present cause.

In this case, these defendants appeared in court ready for trial two years and one month ago, at which time the Assistant United States District Attorney stated in open court that there was not sufficient evidence to convict and moved for a dismissal subject to the rule of the office to receiving permission from the Attorney-General in Washington. By his statement to the court, the defendants were lulled to a point of inactivity. The assumption was natural that the consent of the Attorney General in view of the recommendation of his representative, was unquestioned.

The situation that the defendant Collins finds himself in today is a glaring example of what was a natural sequence of the statement of the District Attorney. The fact that since the motion was made, witnesses necessary for the proper defense of the case are now in the Army and unavailable as witnesses, is another natural sequence of the delay in the case. We must face the actual fact that the memories of man are frail and that

the facts attempted to be adduced in this particular cause are facts that took place in 1938, commencing about the month of August, and continuing until about March or April of 1939. Either the witnesses will have forgotten conversation or their memories will concoct imaginative facts in line with what they thought happened but what most likely did not happen.

The right to a speedy trial as that right is granted under the Constitution, was given because Congress and the people recognized that an accusation of crime is serious; that it affects the reputation of the man accused; that it should be speedily disposed of so that if an innocent man is charged with a crime, he may be exculpated promptly and not be questioned by reason of the indictment [71] or charge. It was also included as a constitutional amendment by reason of the fact that it was recognized that unless a man was tried with reasonable diligence as far as time was concerned, that witnesses would forget the facts surrounding the matter; that witnesses would be unavailable or could not be located; that witnesses might die.

In the case of United States ex rel. Whitaker v. Henning, 15 Fed. (2d) 760, the court, in considering whether mandamus would apply requiring the trial of a man who at the time of the petition was incarcerated in the federal penitentiary, states on page 761;

> "The reason for the majority rule is well stated in State v. Keefe, 17 Wyo. 227, 98 P. 122, 22 L. R. A. (N. S.) 896, 17 Ann. Cas. 161: 'The right of a speedy trial is granted by the Constitution to every accused. A convict is not excepted. He is not only amenable to the law, but is under its protection as

well. No reason is perceived for depriving him of the right granted generally to accused persons, and thus in effect inflict upon him an additional punishment for the offense of which he has been convicted. At the time of defendant's trial upon the one information, he was under the protection of the guaranty of a speedy trial as to the other. It cannot be reasonably maintained, we think, that the guaranty became lost to him upon his conviction and sentence, or his removal to the penitentiary. Possibly in his case, as well as in the case of other convicts, a trial might be longer delayed, in the absence of a statute controlling the question, than in the case of one held in jail merely to await trial, without violating the constitutional right, for an acquittal would not necessarily terminate imprisonment. However, the purpose of the provision against an unreasonable delay in trial is not solely a release from imprisonment in the event of acquittal, but also a release from the harrassment of a criminal prosecution and the anxiety [72] attending the same; and hence an accused admitted to bail is protected as well as one in prison. Moreover, a long delay may result in the loss of witnesses for the accused as well as the state, and the importance of this consideration is not lessened by the fact that defendant is serving a sentence in the penitentiary for another crime." See, also, Frankel v. Woodrough (C. C. A.), 7 F. (2d) 796, and the cases there cited."

A speedy trial is one had as soon after indictment as the prosecution can with reasonable diligence prepare for it, regard being had to the terms of court; a trial conducted according to fixed rules, regulations and proceed-

ings of law free from vexatious, capricious and oppressive delays.

22 Corpus Juris Secundum 716
People v. Molinari, 67 Pac. (2d) 767 (Cal.)
State v. Carrillo, 16 Pac. (2d) 965, 41 Ariz. 170
Von Feldstein v. State, 17 Ariz. 245, 150 Pac. 235

It is our contention that it is not the duty of the defendants to ask that the case be tried as is held in the Phillips case. When a defendant is charged with a crime by indictment, it is incumbent upon the government to follow the letter and spirit of the law. It is not incumbent upon the defendant to point out to the government its failure to comply with the spirit and letter of the law, as well as the explicit wording of the Constitution. The onus is on the government, not on the defendants. If it were otherwise, an indictment could be pending against a man for a lifetime.

Enlarging upon the above thought, the court states in State v. Carrillo, 41 Ariz. 170, as follows:

> ". . . As we read the law, defendant is not required to request a trial. He is not the moving party. It is the state that initiates the accusation, and any delay in its [73] prosecution, except for most cogent reasons, is not contemplated or justifiable. If the state can excuse itself for not bringing the accused to trial, then the onus for celerity is shifted to the accused. There is no intimation in the law that the accused must request a trial before he may claim the right to be dismissed for failure on the part of the state to bring on the prosecution within the limit fixed by law. If the trial is postponed for any reason other than some cause attributable to the accused, in the absence of a showing of good cause for the postponement, it must be dismissed."

When an established procedure is departed from, it may, as in the instant case, lead to the impairment of substantial rights of the defendants. All substantial rights belonging to defendants should be respected. If a substantial right of a defendant is not respected, the same procedure applied to all men placed in the same position would illegally deprive defendants of life and liberty. It is necessary for the protection of all men that we do not have one procedure for one defendant and another procedure for another defendant. To say that in one case defendants may not be brought to trial for years after an indictment has been found and in another case to have a judge require the defendant to go to trial within one week after an indictment is found, is not proper procedure.

Based on the facts as shown in this case, and if this procedure were to be permitted, a court would have little defense if an attorney were to say, "I wish continuance after continuance for term after term by reason of the fact that it was done in a case titled, United States v. Collins, et al." If the government can act as it does in the instant case, it can act that way in every case.

We believe that particularly appropriate statement found in the late case of People v. Rodriguez, 58 Cal. App. (2d) 424, 425: [74]

> "We find particularly appropriate in this connection remarks of former Chief Justice Bleckley of the Supreme Court of Georgia, delivered to the Georgia Bar Association and printed in its annual report (1886) as follows: 'Some meritorious cases, indeed many, are lost in passing through the justice of procedure; but they are all justly lost, provided the rules of procedure have been correctly applied to them.

That a just debt is unrecognized, a just title defeated, or a guilty man acquitted, is no evidence that justice has not been done by the Court or the jury. It may be the highest evidence that justice has been done, for it is perfectly just not to enforce payment of a just debt, not to uphold a just title, not to convict a guilty man, if the debt, or the title, or the guilt be not verified. It is unjust to do justice by doing injustice. A just discovery cannot be made by an unjust search. An end not attainable by just means is not attainable at all; ethically, it is an impossible end. Courts cannot do justice of substance except by and through justice of procedure. They must not reach justice of substance by violating justice of procedure. They must realize both, if they can, but if either has to fail, it must be justice of substance, for without justice of procedure Courts cannot know, nor be made to know, what justice of substance is, or which party ought to prevail. As well might a man put out his eyes in order to see better, as for a court to stray from justice of procedure in order to administer justice of substance.' "

We believe that justice of procedure requires a dismissal of these defendants. [75]

Received copy of the within Motion to Dismiss together with exhibits mailed to Judge Dave W. Ling, Federal Bldg., Phoenix, Ariz., on June 28th, 1944. Ben L. Blue.

[Endorsed]: Filed Jun. 29, 1944. [76]

[Title of District Court and Cause.]

AFFIDAVIT OF SIDNEY MANSTER IN OPPOSITION TO MOTION TO DISMISS

State of California
County of Los Angeles—ss.

Sidney Manster being duly sworn deposes and says:

That deponent is an attorney at law presently employed by the Securities and Exchange Commission and deputized by the Department of Justice as Special Assistant to the United States Attorney for the Southern District of California to assist in the trial of the above-entitled case. The deponent's authority to serve in this capacity is duly filed with the Clerk of this Court. [77]

This affidavit is submitted in opposition to a motion by the defendants to dismiss the indictment herein, which motion is set for hearing in this Court on July 3, 1944, before the Honorable Dave W. Ling. Deponent was served with a copy of the motion papers on June 29, 1944.

The motion for dismissal of the indictment is predicated upon violation of Article 6 of the Constitution of the United States, in that the defendants have been deprived of their rights to a speedy trial.

It should be noted that this motion is made within a week of the date set for trial, July 5, 1944, and after the Government had subpoenaed numerous witnesses residing outside the State of California. No previous application for the relief herein prayed for, and upon these grounds, has been made in this case.

The defendants contend in the affidavits and exhibits in support of this motion that they are prejudiced by a trial at this time for the following reasons:

(1) The unavailability of certain witnesses; (2) the defendant Collins has been unable to obtain certain documents alleged to be in the possession of his former attorney; (3) the prosecution was delayed by the "whim and caprice of attorneys for the Securities and Exchange Commission," who lulled the defendants into a false sense of security by failing to advise the court and defendants that a dismissal of the action would not be approved.

These contentions will be considered in the above order:

(1) The affidavit of the Defendant Fred V. Gordon verified June 28, 1944, states that it was his intention to subpoena as witnesses in his behalf certain individuals whom he claims are now unavailable. Two of these persons, namely Mr. M. H. Soyster and Mr. Christian Vrang, are geologists, and the third, Mr. W. S. Millener, is named as a lessee of a certain oil and gas lease which was assigned to the Union Associated Mines Company.

Gordon's affidavit states that "M. S. Soyster is connected [78] with the United States Geological Survey working out of Roswell, New Mexico." It would, therefore, appear that Mr. Soyster can be located; that he is not outside the process of this court, and that he can be available as a witness if due diligence is exercised to procure his attendance.

In regard to the proposed witness Christian Vrang, Gordon's affidavit states that he "is in the Armed Services of the United States Government with his actual whereabouts unknown to affiant."

Deponent avers that at the time of the investigation, conducted prior to the return of the indictment herein, Christian Vrang was furnished office space and facilities by the defendant Gordon, and was known to have been a business associate of Gordon for a number of years. It further appears that a daughter of Christian Vrang now resides at 280A St. Joseph Street, Long Beach, California, and that she may be in a position to furnish her father's present address.

The defendant Gordon's affidavit fails to establish that reasonable diligence was exercised to locate and subpoena the proposed witnesses, Soyster and Vrang. Furthermore, it does not appear that the testimony to be given by these witnesses is within their exclusive knowledge or opinion, or that other witnesses could not be called upon to furnish equivalent testimony. The cryptic statement, in the defendant Gordon's affidavit, of the participation of Messrs. Soyster and Vrang in connection with the charge in the indictment would indicate that they were to testify as geologists and give opinion evidence with regard to the merits of certain oil fields.

In reference to the proposed witness W. S. Millener, there is no statement in Gordon's affidavit which supports the materiality of Millener's testimony. It is merely alleged that on information and belief Millener received 235,000 shares of Union Associated Mines Company stock for his assignment to that company of a certain oil and gas lease covering forty acres in Kern County, California.

Information contained in the Government's files in this case discloses that on December 28, 1940, William S. Millener executed [79] an affidavit wherein he stated, in part, as follows:

"United States of America
District of Columbia—ss.

"William S. Millener, being duly sworn, deposes and says that:

"During the fall of 1938 and the early part of 1939 I was engaged on my *on* behalf in acquiring and developing oil leases in Kern County, California. In connection with such activity it is customary to lease such lands without giving consideration for them, provided the lessee agrees to expend money in drilling operations to prove or disprove the existence of oil or gas.

"While I was so engaged I acquired such a lease on forty acres of land in what is known as The Devils Den area, Kern County, through Mr. Fred V. Gordon. I gave no consideration for this lease to Mr. Gordon or to anyone else. Thereafter, having consulted geologists and having reached the conclusion that the costs of drilling were too great for me, I assigned this lease in blank. The assignment was prepared in the offices occupied by Messrs. Fischgrund and Dunnigan, and after having made the assignment in blank I left the lease with them. I received no consideration whatsoever for having assigned this lease and I do not know what happened to the lease or to whom it was transferred following my assignment. I did not receive as a consideration for this assignment any stock whatsoever of Union Associated Mines company. I do recall that in con-

nection with the assignment I was called upon to sign several papers or documents and, although I do not recall [80] specifically that any of these was a certificate of Union Associated Mines Company stock, it may have been possible that I signed such a certificate by way of endorsement in blank at the suggestion of either Mr. Fischgrund or Mr. Dunnigan or whoever might have been present at that time in their offices. If I did make an assignment of Union Associated Mines Company stock, it was done purely in connection with the transfer of the lease and did not represent stock which I owned or which had been held in my name or from which I derived any benefit whatsoever. If there was anything of this nature it was done strictly by way of accommodation for those interested in the transfer of the lease and in order to clear up the details of the transfer. I was interested only in transferring the lease back to the proper parties because I had no further interest in developing it.

"I have no knowledge at all of any negotiations which preceded my assignment of the lease, other than those which have already been mentioned. I have no knowledge of what was done with the lease after my assignment, other than what has already been mentioned."

The above quotation would appear to refute the statement by the defendant Gordon, made on information and belief, that Millener received 235,000 shares of Union Associated Mines Company stock in consideration for his assignment of the lease in question. No further facts are set forth in Gordon's affidavit which indicate the materiality of Millener's testimony.

(2) The second contention of the defendants that they are prejudiced by a trial at this time is found in the affidavits of the defendant James H. Collins and his present counsel, Mr. Thomas Morris, both verified June 28, 1944. The affidavit of the defendant Collins alleges that he had entrusted certain records and documents in con- [81] nection with this case to his former attorney, Charles H. Heustis of Los Angeles; that he attempted to communicate with his counsel, Mr. Heustis, in October, 1943; that he was informed that Mr. Heustis was serving in the United States Army and that he immediately forwarded a letter to him at the address furnished by Mrs. Heustis. The affidavit then alleges that the defendant Collins received a reply from Mr. Heustis in March, 1944, to the effect that he would forward to Collins all relevant documents in connection with the case. Collins states that he has not heard from Mr. Heustis since that time.

It should be noted that a copy of the letter received by the defendant Collins from Mr. Heustis in March, 1944, is not attached to the exhibits in support of this motion, although Mr. Morris has attached copies of letters addressed by him to Private Charles H. Heustis and Mrs. Heustis.

The affidavit by the defendant Collins further alleges that he was lulled into a sense of security by a statement made by an Assistant United States Attorney on June 4, 1942, to the effect that his case would be dismissed, and that in reliance upon this statement he neglected to procure certain evidence from his attorney.

In refutation of Collins's claim that he was prejudiced by this statement of the Assistant United States Attorney, entries in the criminal docket of this case disclose

that the case appeared on the calendar of this court on six successive occasions since September 13, 1943, for the purpose of setting a date for trial. It further appears from the court reporter's transcript of the proceedings herein held on October 13, 1943, that Charles H. Heustis appeared as counsel for the defendant Collins. The court reporter's transcript of the proceedings held on February 7, 1944 also discloses that Charles H. Heustis appeared as counsel for the defendant Collins and engaged in a colloquy in the court with reference to fixing a date for trial.

On February 7, 1944, and at later proceedings herein, the defendant Collins advised both Judge Benjamin Harrison and Judge Harry A. [82] Hollzer of this Court of the claim set forth herein; namely, that certain of his papers were unavailable. Notwithstanding such claim, Judges Harrison and Hollzer assigned this case for trial, and gave the defendant Collins ample opportunity to obtain all necessary evidence in his behalf.

The affidavit submitted in support of this motion by Mr. Morris indicates that Mr. Heustis is exercising a lien on certain papers of Collins as security for the payment of his fees. However, Mr. Morris states that the defendant Collins has advised him that he is not indebted to Mr. Heustis.

From the above facts it appears that the defendant Collins had sufficient opportunity, at least since September, 1943, to obtain those documents which he deems necessary to his defense. He cannot at this time seek to profit by his lack of diligence in the preparation of his defense, especially if his alleged predicament was brought about by his failure to discharge an indebtedness to his attorney.

(3) The third contention in support of the relief prayed for herein is found in the affidavit of the defendant Fischgrund. It is charged "that this action has been delayed merely because of the whim and caprice of the attorneys for the Securities and Exchange Commission . . . and that it was their duty to the court and to the defendants to advise the court that no dismissal would be approved or authorized in order not to lull the defendants into a false sense of security."

The defendant Fischgrund, as an attorney at law, should have knowledge that the Securities and Exchange Commission has no power to initiate, maintain or dispose of criminal cases and that neither the Commission nor its attorneys have any jurisdiction to prosecute or dismiss a criminal case. The defendant Fischgrund likewise should have knowledge that neither the Commission nor its attorneys have any authority or jurisdiction to approve, veto or modify the decisions of the Department of Justice in connection with the prosecution or disposition of a criminal case. [83]

Title 15 U. S. C. §77 t. (b), Section 20(b) of the Securities Act of 1933, provides in part as follows:

> ". . . The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this title . . ."

The trial of this case has not been unduly delayed. The indictment herein was returned on February 4, 1942. The defendants have at all times been on bail or at liberty upon their own recognizance. The defendant Gordon's motion to quash the indictment, or in the alternative to inspect the Grand Jury minutes in furtherance of his

motion to quash, was denied by Judge Harry A. Hollzer on March 16, 1942. The defendant Gordon's petition for a writ of prohibition to the Judges of the Circuit Court of Appeals, 9th Judicial Circuit, directing the United States District Court for the Southern District of California to show cause why it should not be restrained from the trial of this case, or from taking further jurisdiction therein, was denied by the Circuit Court on May 7, 1942.

The affidavits, exhibits and arguments presented by the defendants in support of this motion, fail to indicate wherein these defendants, or any of them, would be prejudiced by proceeding with the trial of this case on the date scheduled therefor.

Deponent avers that on the six occasions since September 13, 1943 that this case appeared on the calendar of this court for setting a trial date, the Government announced its readiness to proceed to trial at a date to suit the convenience of the court and the defendants.

Wherefore, by reason of the facts above stated, and upon all the proceedings heretofore had in this case, the Government respectfully requests that the motion for dismissal of the indictment herein be denied. [84]

SIDNEY MANSTER

Sworn to and subscribed before me this 1st day of July, 1944.

(Seal) EDMUND L. SMITH,
Clerk U. S. District Court, Southern District of California

By Irwin Hames, Deputy

.....
Notary Public [85]

[Title of District Court and Cause.]

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

The indictment herein, which charges these defendants with violation of the Securities Act of 1933 in two counts, violation of the mail fraud statute in eight counts, and conspiracy to violate both statutes, was returned by a grand jury in this district on February 4, 1942.

The trial is presently scheduled to commence on July 5, 1944. Since the return of the indictment and to the present time, all defendants have been admitted to bail or at liberty on their own recognizance.

This case has appeared on the trial calendar of this court on six successive occasions since September 13, 1943, for the purpose of setting a trial date. Entries from the criminal docket show that [86] this case appeared on the calendar of this court as follows: September 13, 1943; October 18, 1943; February 7, 1944; March 13, 1944; March 20, 1944; April 3, 1944. At the calendar call of the case on the above dates, the defendants either requested adjournments on the ground that they were not ready to proceed to trial or consented to adjournments by the court for the purpose of fixing a trial date.

Motion papers in support of this application to dismiss the indictment on the ground that the defendants were not accorded a speedy trial in violation of their constitutional rights, were served upon Government counsel on June 29, 1944. The motion is set for hearing on July 3, 1944, two days before the trial date. No previous application for the relief herein requested upon these grounds has been made in this case. Under these circumstances, and for the reasons set forth herein and

in the affidavit attached hereto, it is urged that this motion is without merit and should be denied.

In Daniels, et al. v. U. S., 17 F. 2nd 339 (1927—C. C. A. 9th) at page 344, the court stated:

> "No statute within the United States defines the time within which criminal accusations must be tried. In the absence of such a statute, it would seem that, if the accused fails in his efforts to bring the case on for trial, his only remedy would be to apply to an appellate court for mandamus. It has been so held. Frankel v. Woodrough (C. C. A.), 7 F. 2nd. 796. It is also held that one may not acquiesce in the postponement of his trial from time to time, and then insist on dismissal because he has been denied a speedy trial. Phillips v. U. S. (C. C. A.), 201 F. 259; Worthington v. U. S. (C. C. A.), 1 F. 2nd. 154, certiorari denied 266 U. S. 626, 45 S. Ct. 125, 69 L. Ed. 475. Here the indictment was returned November 12, 1920, and the [87] trial was had October 6, 1925 . . It is not shown that at any time between the indictment and the trial, effort was made by the defendant to expedite the case or to bring it on for hearing . . . The motion to dismiss was clearly without merit." Certiorari was denied: 274 U. S. 744.

In United States v. Gill, 55 F. 2nd. 399 (1931), the Court cited the Daniels, Phillips and Worthington cases with approval, and stated:

> "The provisions for a speedy trial, 'in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial' (Amendment 6), is a personal right which may be waived."

In Carter v. Tennessee, 18 F. 2nd. 850 (1921—C. C. A. 6th) the defendant was indicted at the August term,

1920. He was brought to trial in October, 1923. During this interim he was imprisoned on conviction of another crime. The court cited the Daniels case in overruling the motion to dismiss him because he had not been accorded a speedy trial.

The ruling upon the facts in the Carter case presents an even stronger argument for the denial of the motion herein than the facts of the instant case would warrant. In the Carter case, the defendant was incarcerated and therefore handicapped in efforts to retain counsel and seek the appropriate legal remedy in his behalf. In the instant case, these defendants have at all times been at liberty and represented by counsel, with the exception of the defendant Fischgrund who is an attorney and appears in his own behalf.

Attached and made a part hereof is the affidavit of Sidney Manster, Special Assistant to the United States Attorney.

The motion to dismiss is without merit and should be denied. [88]

Respectfully submitted,

CHARLES H. CARR
United States Attorney

LLEWELLYN J. MOSES
Assistant to the United States Attorney

JAMES M. EVANS
Special Assistant to the United States Attorney

SIDNEY MANSTER
Special Assistant to the United States Attorney

Received copy of the within Affidavit this 3 day of July. 1944. Ben L. Blue, D. H. Cannon, Thos. Morris, Sidney Fischgrund.

[Endorsed]: Filed Sep. 5, 1944. [89]

[Minutes: Wednesday, July 5, 1944]

Present: The Honorable Dave W. Ling, District Judge.

This cause coming on for decision on motion of defendants James H. Collins, Sidney Fischgrund, Fred V. Gordon, John H. Morgan, Christopher E. Schirm to dismiss; L. J. Moses and J. E. Evans, Assistant U. S. Attorneys, appearing as counsel for the Government; S. Manster, Esq., appearing as counsel for the Securities & Exchange Committee; Thomas Morris, Esq., appearing as counsel for Defendant Collins; Ben L. Blue, Esq., appearing as counsel for Defendants Schirm and Gordon; David H. Cannon, Esq., appearing as counsel for Defendant Morgan; Defendant Fischgrund being present in propria persona; and James J. Marquardt, Court Reporter, being present and reporting the testimony and the proceedings:

The Court states that motion to dismiss is denied and exception is noted for all the defendants.

* * * * * * * * * [90]

[Title of District Court and Cause.]

VERDICT OF THE JURY

We, the Jury in the above-entitled cause, find the defendant James H. Collins, Not Guilty as charged in Count 1 of the Indictment; Not Guilty as charged in Count 2 of the Indictment; Not Guilty as charged in

County 4 of the Indictment; Not Guilty as charged in Count 5 of the Indictment; Not Guilty as charged in Count 9 of the Indictment; Not Guilty as charged in Count 10 of the Indictment; and Guilty as charged in Count 11 of the Indictment.

Dated: Los Angeles, California, July 24, 1944.

FRANCIS G. HANSON
Foreman of the Jury

[Endorsed]: Filed Jul. 25, 1944. [91]

[Title of District Court and Cause.]

VERDICT OF THE JURY

We, the Jury in the above-entitled cause, find the defendant Sidney Fischgrund, Not Guilty as charged in Count 1 of the Indictment; Not Guilty as charged in Count 2 of the Indictment; Not Guilty as charged in County 4 of the Indictment; Not Guilty as charged in Count 5 of the Indictment; Not Guilty as charged in Count 9 of the Indictment; Not Guilty as charged in Count 10 of the Indictment; and Guilty as charged in Count 11 of the Indictment.

Dated: Los Angeles, California, July 24, 1944.

FRANCIS G. HANSON
Foreman of the Jury

[Endorsed]: Filed Jul. 25, 1944. [92]

[Title of District Court and Cause.]

VERDICT OF THE JURY

We, the Jury in the above-entitled cause, find the defendant Christopher E. Schirm, Not Guilty as charged in Count 1 of the Indictment; Not Guilty as charged in Count 2 of the Indictment; Not Guilty as charged in County 4 of the Indictment; Not Guilty as charged in Count 5 of the Indictment; Not Guilty as charged in Count 9 of the Indictment; Not Guilty as charged in Count 10 of the Indictment; and Guilty as charged in Count 11 of the Indictment.

Dated: Los Angeles, California, July 24, 1944.

FRANCIS G. HANSON
Foreman of the Jury

[Endorsed]: Filed Jul. 25, 1944. [93]

[Title of District Court and Cause.]

MOTION TO VACATE THE JUDGMENT OF CONVICTION AND TO DISCHARGE THE DEFENDANTS NOTWITHSTANDING THE VERDICT.

Come now the defendants, James H. Collins, Sidney Fischgrund, and Christopher E. Schirm, and jointly and separately move the court to vacate and set aside the judgment of conviction herein and to discharge the defendants and each of them, notwithstanding the verdict.

That this motion is made upon the records and files herein and upon the transcript of the proceedings on the trial of this action and upon the exhibits offered and received herein, which transcript and exhibits are hereby referred to and relied upon by the said defendants. Said motion is made upon the following grounds and each of them:

1. That the verdicts of the jury finding the said defendants and each of them guilty as charged in the Eleventh Count of the indictment herein, was and is contrary to law and not supported by the law and the facts involved in these proceedings.

DAVID H. CANNON
THOMAS MORRIS
Attorneys for Defendant, John H. Collins

BEN L. BLUE
Attorney for Defendant, Christopher E. Schirm

SIDNEY FISCHGRUND
In Pro. Per.

Received the within Motion to Vacate the Judgment of Conviction and to Discharge the Defts. notwithstanding the Verdict, this 27th day of July, 1944. Charles H. Carr, United States Attorney, by Mary Wentworth.

[Endorsed]: Filed Jul. 27, 1944. [94]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Come now the defendants, James H. Collins, Sidney Fischgrund, and Christopher E. Schirm, in the above entitled action, jointly and severally, and move the Court that the verdict in this action against them, and against each of them be set aside, and that they and each of them be granted a new trial, upon the following grounds:

1. That the Court erred in decisions of questions of law arising during the course of the trial.

2. That the verdict is contrary to the law.

3. That the verdict is contrary to the evidence.

4. That the verdict is contrary to the law and the evidence.

5. Because the verdict is against the weight of the evidence.

6. Because the verdict is insufficient to sustain or justify the verdict.

7. Because the facts stated in the indictment against these defendants do not constitute an offense against the United States.

8. Because the Court erred in admitting irrelevant evidence over the objections of the defendants.

9. Because the Court erred in admitting incompetent [95] evidence over the objection of the defendants.

10. Because the Court erred in admitting immaterial evidence over the objections of the defendants.

11. Because the Court erred in sustaining the objections of the Government to competent evidence offered by the defendants.

12. Because the Court erred in sustaining the objections of the Government to relevant evidence offered by the defendants.

13. Because the Court erred in sustaining the objections of the Government to material evidence offered by the defendants.

14. Because the Court erred in admitting, over the objection of the defendants, hearsay evidence.

15. Because the Court erred in admitting, over the objection of the defendants, evidence for the introduction of which no proper or any foundation had been laid.

16. Because of other errors of law occurring at the trial, more fully shown by the transcript herein, which transcript is hereby referred to and relied upon by the defendants herein.

Wherefore, the defendants, James H. Collins, Sidney Fischgrund, and Christopher E. Schirm pray that the verdict herein may be set aside and that they and each of them be granted a new trial.

DAVID H. CANNON
THOMAS MORRIS
Attorneys for Defendant, John H. Collins

BEN L. BLUE
Attorney for Defendant, Christopher E. Schirm

SIDNEY FISCHGRUND
In Pro. Per.

Received the within Motion for New Trial this 27th day of July, 1944. Charles H. Carr, United States Attorney, by Mary Wentworth.

[Endorsed]: Filed Jul. 27, 1944. [96]

[Title of District Court and Cause.]

MOTION FOR ARREST OF JUDGMENT

Come now the defendants, James H. Collins, Sidney Fischgrund, and Christopher E. Schirm, and jointly and separately move the court to refrain from entering a judgment against any of them based upon the verdict rendered in this case, upon the following grounds:

1. That the Eleventh Count in said indictment does not state facts sufficient to constitute a punishable offense, or any offense or crime against the laws or any law or against the Constitution of the United States of America, and particularly said Eleventh Count does not state facts sufficient to constitute a violation of Section 88, Title 18, United States Code.

DAVID H. CANNON
THOMAS MORRIS
Attorneys for Defendant, John H. Collins

BEN L. BLUE
Attorney for Defendant, Christopher E. Schirm

SIDNEY FISCHGRUND
In Pro. Per.

Received the within Motion for Arrest of Judgment this 27th day of July, 1944. Charles H. Carr, United States Attorney, by Mary Wentworth.

[Endorsed]: Filed Jul. 27, 1944. [97]

[Minutes: Tuesday, August 1, 1944]

President: The Honorable David W. Ling, District Judge.

This cause coming on for decision on motions of defendants Collins, Fischgrund and Schirm to vacate judgment, etc., and for arrest of judgment, and for hearing on motion of said defendants for new trial, pursuant to motions filed July 27, 1944; and for sentence of said defendants; James M. Evans, Esq., Special Assistant U. S. Attorney, appearing for the Government; David H. Cannon, Esq., appearing for defendant Collins; Ben Blue, Esq., appearing for defendant Schirm; Sidney Fischgrund appearing in propria persona and also by Ben Blue, Esq., Harry P. Furdson, Court Reporter, being present and reporting the proceedings:

The Court states the record may show that motions for arrest of judgment and to vacate judgment are denied and an exception allowed each defendant.

The Court pronounces judgment against the defendants as follows:

* * * * * * * * *

The Court states that the record may show that the motion for new trial is denied and an exception allowed each defendant. [98]

District Court of the United States
Southern District of California
Central Division

No. 15,229

Criminal Indictment in 11 counts for violation of
U. S. C., Title 15, Secs. 77q (a) (1) and
Title 18, Secs. 88, 338

UNITED STATES

v.

JAMES H. COLLINS, et al.

JUDGMENT AND COMMITMENT

On this 1st day of August, 1944, came the United States Attorney, and the defendant James H. Collins appearing in proper person, and by counsel, David H. Cannon, Esq., and

The defendant having been convicted on jury verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit, on Count 11, conspiracy, as more fully set out in the indictment herein, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By the Court

Ordered and Adjudged that the imposition of sentence is suspended one year.

DAVE W. LING
United States District Judge

[Endorsed]: Filed this 1st day of August, 1944. [99]

District Court of the United States
Southern District of California
Central Division

No. 15,229

Criminal Indictment in 11 counts for violation of
U. S. C., Title 15, Secs. 77q (a) (1) and
Title 18, Secs. 88, 338

UNITED STATES

v.

JAMES H. COLLINS, et al.

JUDGMENT AND COMMITMENT

On this 1st day of August, 1944, came the United States Attorney, and the defendant Sidney Fischgrund appearing in proper person, and by counsel, Ben Blue, Esq., and,

The defendant having been convicted on jury verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit, on Count 11, conspiracy, as more fully set out in the indictment herein, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By the Court

Ordered and Adjudged that the imposition of sentence is suspended one year.

DAVE W. LING
United States District Judge

[Endorsed]: Filed this 1st day of August, 1944. [100]

in refusing to instruct the jury to return verdicts acquitting the Appellant on each and all of the counts in the indictment; that the court erred in refusing to grant Appellant's motion for arrest of judgment; that the court erred in not furnishing the trial jury with a copy of the court's charge to the jury, or permitting such charge to be re-read to the jury, when so requested by the jury; that the trial court committed errors in the admission and rejection of evidence all duly excepted to; that there was not sufficient or any evidence to justify finding Appellant guilty.

[Endorsed]: Filed Aug. 5, 1944. [103]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant—Sidney Fischgrund, 924 Foreman Building, Los Angeles, California.

Name and address of appellant's attorneys—David H. Cannon, 650 South Spring Street, Los Angeles, California, and Ben L. Blue, 620 Bartlett Building, Los Angeles, California.

Offense—Using mails in scheme to defraud (Sec. 338, Title 18, U. S. Code); violation of Securities Act of 1933 (Sec. 17(a)(1), Securities Act of 1933, Sec. 77q(a)(1), Title 15, U. S. C.) and conspiracy (Sec. 88, Title 18, U. S. Code).

Date of judgment—August 1, 1944.

Brief description of judgment or sentence—Entered judgment of conviction on Eleventh Count charging conspiracy, and of acquittal on Counts One to Ten, both inclusive, imposition of sentence suspended one year.

Name of prison where now confined, if not bail—At liberty on own recognizance.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment above-mentioned on the grounds set forth below, and from the motion denying a new trial.

SIDNEY FISCHGRUND

Dated: August 5, 1944. [104]

Grounds of Appeal: That the verdicts acquitting the Appellant of charges embraced in Counts One to Ten, both inclusive, and convicting the Appellant of the charges in Count Eleven were and are inconsistent; that the court erred in refusing to instruct the jury to return verdicts acquitting the Appellant on each and all of the counts in the indictment; that the court erred in refusing to grant Appellant's motion for arrest of judgment; that the court erred in not furnishing the trial jury with a copy of the court's charge to the jury, or permitting such charge to be re-read to the jury, when so requested by the jury; that the trial court committed errors in the admission and rejection of evidence all duly excepted to; that there was not sufficient or any evidence to justify finding Appellant guilty.

[Endorsed]: Filed Aug. 5, 1944. [105]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant—Christopher E. Schirm, c/o Walter Lyon, Pershing Square Building, Los Angeles, Calif.

Name and address of appellant's attorney—Ben L. Blue, 620 Bartlett Building, Los Angeles, California.

Offense—Using mails in scheme to defraud (Sec. 338, Title 18, U. S. Code); violation of Securities Act of 1933 (Sec. 17(a)(1), Securities Act of 1933, Sec. 77q(a)(1), Title 15, U. S. C.) and conspiracy (Sec. 88, Title 18, U. S. Code).

Date of judgment—August 1, 1944.

Brief description of judgment or sentence—Entered judgment of conviction on Eleventh Count charging conspiracy, and of acquittal on Counts One to Ten, both inclusive, imposition of sentence suspended one year.

Name of prison where now confined, if not bail—At liberty on own recognizance.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment above-mentioned on the grounds set forth below, and from the motion denying a new trial.

CHRISTOPHER E. SCHIRM

Dated: August 5, 1944. [106]

Grounds of Appeal: That the verdicts acquitting the Appellant of charges embraced in Counts One to Ten, both inclusive, and convicting the Appellant of the charges in Count Eleven were and are inconsistent; that the court erred

in refusing to instruct the jury to return verdicts acquitting the Appellant on each and all of the counts in the indictment; that the court erred in refusing to grant Appellant's motion for arrest of judgment; that the court erred in not furnishing the trial jury with a copy of the court's charge to the jury, or permitting such charge to be re-read to the jury, when so requested by the jury; that the trial court committed errors in the admission and rejection of evidence all duly excepted to; that there was not sufficient or any evidence to justify finding Appellant guilty.

[Endorsed]: Filed Aug. 5, 1944. [107]

[Title of District Court and Cause.]

STIPULATION AND ORDER AS TO CAPTIONS AND ORIGINAL EXHIBITS

It Is Hereby Stipulated by and between the parties hereto and their respective attorneys in the above entitled cause, that the Clerk of the Court may, in preparing the certified transcript of the record, omit from the caption of all documents, except the indictment filed in said cause, the title of the court and cause, and insert therein the words "Title of Court and Cause."

It Is Further Stipulated that the Clerk of the Court may omit all words and figures upon the back of all documents in the record, except the filing mark thereof.

It Is Further Stipulated that all Exhibits which are omitted and not copied in the proposed Bill of Exceptions, may be copied by the printer from the original Exhibits as filed in this cause, at the respective places so specified for said Exhibits in the Bill of Exceptions.

Dated this 10th day of August, 1944.

DAVID H. CANNON
Attorney for Defendant and Appellant,
James H. Collins

DAVID H. CANNON and
BEN L. BLUE
By David H. Cannon
Attorneys for Defendant and Appellant,
Sidney Fischgrund [108]

BEN L. BLUE
Attorney for Defendant and Appellant,
Christopher E. Schirm

CHARLES H. CARR,
U. S. Attorney
LLEWELLYN J. MOSES,
Assistant U. S. Attorney
JAMES M. EVANS,
Special Assistant to U. S. Attorney
S. MANSTER,
Special Assistant to U. S. Attorney
By James M. Evans
Attorneys for Plaintiff and Appellee

It Is So Ordered.

Dated: August 15, 1944.

DAVE W. LING
United States District Judge

Received copy of the within Stipulation this 10th day of August, 1944. James M. Evans, Attorney for Plaintiff and Appellee.

[Endorsed]: Filed Aug. 15, 1944. [109]

[Title of District Court and Cause.]

STIPULATION AND ORDER RE EXHIBITS

It Is Hereby Stipulated by and between the parties hereto and their respective attorneys that all exhibits in the above entitled action which are not copied in the Bill of Exceptions shall, by the Clerk of the District Court, be certified and forwarded to the Clerk of the Circuit Court of Appeals for the Ninth Circuit.

Dated: August 10th, 1944.

DAVID H. CANNON
Attorney for Defendant and Appellant,
James H. Collins

DAVID H. CANNON and
BEN L. BLUE
By David H. Cannon
Attorneys for Defendant and Appellant,
Sidney Fischgrund

BEN L. BLUE
Attorney for Defendant Appellant,
Christopher E. Schirm

CHARLES H. CARR,
U. S. Attorney
LLEWELLYN J. MOSES,
Ass't. U. S. Attorney
JAMES M. EVANS,
Special Assistant to U. S. Attorney
S. MANSTER,
Special Assistant to U. S. Attorney
By James M. Evans
Attorneys for Plaintiff and Appellee

It Is So Ordered:

Dated: August 15, 1944.

DAVE W. LING
United States District Judge [110]

Received copy of the within Stipulation this 10th day of August, 1944. James M. Evans, Attorney for Plaintiff and Appellee.

[Endorsed]: Filed Aug. 15, 1944. [111]

[Title of District Court and Cause.]

STIPULATION AND ORDER EXTENDING TIME TO SETTLE BILL OF EXCEPTIONS AND FILE ASSIGNMENTS OF ERROR

It Is Hereby Stipulated and agreed by and between the above named parties through their respective attorneys, that the time within which the defendants and appellants, James H. Collins, Sidney Fischgrund, and Christopher E. Schirm, may prepare, serve and settle a proposed Bill of Exceptions herein, and to prepare, serve and file their Assignments of Error, all in connection with the appeal in the above entitled action, may be extended to and including the 5th day of October, 1944.

Dated: August 19, 1944.

DAVID H. CANNON and
BEN L. BLUE
By David H. Cannon
Attorneys for Defendants and Appellants
CHARLES H. CARR,
U. S. Attorney
LLEWELLYN J. MOSES,
Ass't. U. S. Attorney

JAMES M. EVANS,
Special Assistant to U. S. Attorney
S. MANSTER,
Special Assistant to U. S. Attorney
By James M. Evans
Attorneys for Plaintiff and Appellee.

It Is So Ordered: This 22 day of August, 1944.

DAVE W. LING
United States District Judge

[Endorsed]: Filed Aug. 22, 1944. [112]

[Title of District Court and Cause.]

STIPULATION AND ORDER EXTENDING TIME TO SETTLE BILL OF EXCEPTIONS AND FILE ASSIGNMENTS OF ERROR

It Is Hereby Stipulated and agreed by and between the above named parties through their respective attorneys, that the time within which the defendants and appellants, James H. Collins, Sidney Fischgrund and Christopher E. Schirm, may prepare, serve and settle a proposed Bill of Exceptions herein, and within which to prepare, serve and file their Assignments of Error, all in connection with the appeal in the above entitled action, may be extended to and including the 20th day of October, 1944.

Dated: September 20, 1944.

DAVID H. CANNON and
BEN L. BLUE
By Ben L. Blue
Attorneys for Defendants and Appellants

CHARLES H. CARR
U. S. Attorney
LLEWELLYN J. MOSES
Ass't. U. S. Attorney
JAMES M. EVANS
Special Ass't. to U. S. Attorney
S. MANSTER
Special Ass't. to U. S. Attorney
By James M. Evans
Attorneys for Plaintiff and Appellee

It Is So Ordered: This 22nd day of September, 1944.

ALBERT LEE STEPHENS
United States Circuit Judge
FRANCIS A. GARRECHT
U. S. Circuit Judge

[Title of District Court and Cause.]

AFFIDAVIT OF BEN BLUE IN SUPPORT

State of California
County of Los Angeles—ss.:

Ben L. Blue, being first duly sworn, deposes and says:

That affiant is one of the attorneys of record for the appellants herein; that David H. Cannon is associated with him as attorney of record;

That heretofore and to wit, on September 12, 1944, a stipulation was entered into by and between them and Charles H. Carr, United States District Attorney, wherein and whereby it was stipulated that the appellants here-

in would have to and including October 20, 1944, within which to prepare, serve and file a proposed bill of exceptions and their assignments of error; that said stipulation was forwarded to Honorable Dave Ling, United States District Judge, who presided at the trial of the case, but who at the present time is in Phoenix, Arizona, as more fully appears by the letter attached hereto, marked Exhibit "A", and by reference made a part hereof;

That by reason of the fact that the stipulation was forwarded to Judge Ling by mail, the order granting the extension of time was not signed by Judge Ling until after the original 30 days expired. That the bill of exceptions in the above entitled case has been entirely prepared and covers 262 typewritten pages, and the transcript in the trial of the cause consumed approximately 1500 pages.

That the attorneys for the appellants have worked diligently to prepare the bill of exceptions and the assignments of error within the time specified by the rules of the court, and did prepare the order for the extension of time properly and timely, but by reason of Judge Ling's absence from the city it was not possible to have it signed within the 30 days.

That in the interests of justice, the appellants should have to and including the 20th day of October, 1944, within which to file their proposed bill of exceptions and their assignments of error.

David H. Cannon, who had prepared and forwarded the stipulations and the order is at the present time out of the city and will not return for at least ten days. Mr. Cannon left Los Angeles approximately a week ago on legal business in Toronto, Canada, and Washington, D. C.

BEN L. BLUE

Subscribed and sworn to before me this 20th day of September, 1944.

(Seal) ZOA L. ZACCHE

Notary Public in and for the County of Los Angeles, State of California

EXHIBIT "A"

September 12, 1944

Honorable Dave Ling
U. S. District Judge
Phoenix, Arizona

In re: U. S. vs. Collins et al
Southern California No. 15229

My dear Judge:

None of us expect that we will need all of the time asked for under the attached stipulation. However, out of an abundance of caution, and because I am leaving the city today to be gone for several weeks, we all thought it advisable to get this extension of time.

When and if you make the order, will you please mail it to the Clerk in Los Angeles for filing.

Kind regards.

Sincerely yours,
David H. Cannon
of CANNON & CALLISTER

WB
Encl.
cc Mr. Blue
Mr. Fischgrund

Received copy of the within Stipulation this 20th day of Sept., 1944. James M. Evans, Attorney for Appellee.

[Endorsed]: Filed Sep. 25, 1944. Paul P. O'Brien, Clerk.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 115 inclusive contain full, true and correct copies of Indictment; Motion of Fred V. Gordon to Quash Indictment; Motion of Sidney Fischgrund to Quash Indictment; Minute Orders Entered March 2, 1942 and March 16, 1942; Motion to Dismiss; Affidavit of Sidney Manster in Opposition to Motion to Dismiss; Minute Order Entered July 5, 1944; Three Verdicts of the Jury; Motion to Vacate the Judgment of Conviction and to Discharge the Defendants Notwithstanding the Verdict; Motion for New Trial; Motion for Arrest of Judgment; Minute Order Entered August 1, 1944; Three Judgments and Commitments; Three Notices of Appeal; Stipulation and Order re Captions, etc.; Stipulation and Order re Exhibits; Stipulation and Order Extending Time to Settle Bill of Exceptions, etc.; Praecipe and Supplemental Praecipe which, together with Original Bill of Exceptions, Original Assignment of Errors and Original Exhibit transmitted herewith constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to $40.75 which sum has been paid to me by Appellants.

Witness my hand and the seal of said District Court this 14 day of November, 1944.

[Seal] EDMUND L. SMITH, Clerk
By Theodore Hocke
Chief Deputy Clerk.

[Endorsed]: No. 10846. United States Circuit Court of Appeals for the Ninth Circuit. James H. Collins, Sidney Fischgrund and Christopher E. Schirm, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed November 16, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10846—Criminal

UNITED STATES OF AMERICA,
Plaintiff and Appellee,

vs.

JAMES H. COLLINS, et al.,
Defendants and Appellants.

AFFIDAVIT

State of California
County of Los Angeles—ss:

David H. Cannon, being duly sworn, deposes and says:

That he is one of the attorneys for the above-named appellants; that a stipulation is now on file between the attorneys for the above-named parties under which it is agreed that the appellants herein may, with the consent of the Court, have to and including November 10, 1944 within which to prepare, serve and file a proposed Bill

of Exceptions herein, and within which to prepare, serve and file their Assignments of Error herein.

DAVID H. CANNON

Subscribed and sworn to before me this 20th day of October, 1944.

(Seal) REED E. CALLISTER

Notary Public in and for the County of Los Angeles, States of California.

It Is So Ordered That Such Extension of Time Be Granted.

Dated: October 20th, 1944.

WILLIAM DENMAN
ALBERT LEE STEPHENS
United States Circuit Judges.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT

Re: Extension of Time to File Bill of Exceptions and Assignment of Errors to November 10, 1944

State of California
County of Los Angeles—ss:

David H. Cannon, being duly sworn, deposes and says:

That he is one of the attorneys for the above-named appellants; that such extension is necessary because affiant, who has been in charge of preparation of this Bill of Exceptions for the appellants, has necessarily been absent from California on war business for four weeks and has just returned to California, and for that reason it was impossible to complete the proposed amendments to the Bill of Exceptions at an earlier date and it was

desired by all parties, including the Trial Judge, to have a stipulation made between the parties that the Bill of Exceptions contained all of the evidence before the Trial Court.

DAVID H. CANNON

Subscribed in my presence and sworn to before me this 21st day of October, 1944.

(Seal) EARLE E. SWEM
Notary Public

[Endorsed]: Filed Oct. 21, 1944. Paul P. O'Brien, Clerk.

[Minutes: Tuesday, April 3, 1945]

Present: The Honorable Paul J. McCormick, District Judge.

This cause coming on for further proceedings as to defendants James H. Collins, Sidney Fischgrund and Christopher E. Schirm; A. DiGirolamo, Esq., Assistant U. S. Attorney, appearing for the Government; Ben Blue, Esq., appearing for defendants Fischgrund and Schirm; David H. Cannon, Esq., appearing for defendant Collins; H. A. Dewing, Court Reporter, being present and reporting the proceedings; the said defendants being present in court:

Attorney Cannon makes a statement and waives any jurisdictional feature. Attorney DiGirolamo makes a statement that Mandate of the Circuit Court of Appeals has not been filed. It is ordered that this cause be, and it hereby is, continued to April 9, 1945, at 2 P. M. for further proceedings. [2]

[Minutes: Monday, April 9, 1945]

Present: The Honorable Paul J. McCormick, District Judge.

This cause coming on for further proceedings as to defendants James H. Collins, Sidney Fischgrund, and Christopher E. Schirm; A. DiGirolamo, Esq., Asst. U. S. Attorney, appearing for the Government; Ben Blue, Esq., appearing for defendants Fischgrund and Schirm; David H. Cannon, Esq., appearing for defendant Collins; Hollis O. Black, Esq., appearing for the Securities & Exchange Commission; James J. Marquardt, Court Reporter, being present and reporting the proceedings; the said defendants being present:

Attorney DiGirolamo makes a statement. Attorney Blue makes a statement in behalf of the defendants. Attorney Cannon makes a statement. Attorney Black makes a statement. The Court pronounces judgment against each of the defendants as follows:

* * * * * * * * *

It is further ordered that each of said defendants remain on his own recognizance pending appeal. [3]

District Court of the United States
Southern District of California
Central Division

No. 15229

Criminal Indictment in 11 counts for violation of
U. S. C., Title 15 and 18,
Secs. 77q(a)(1); 88, 338.

UNITED STATES

v.

JAMES H. COLLINS

JUDGMENT AND COMMITMENT

On this 9th day of April, 1945, came the United States Attorney, and the defendant James H. Collins appearing in proper person and by Counsel, David H. Cannon, Esq., and, the defendant having been convicted on verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: count 11, conspiracy to commit certain offenses against the United States, to-wit: to wilfully violate Section 17(a)(1) of the Securities Act of 1933, and Section 215 of the Criminal Code of the United States, as charged and set forth in said 11th count of the Indictment, in violation of Title 18, United States Code, Section 88, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of One (1)

year in a Federal Jail, said term of imprisonment to be suspended for a period of Two (2) years, and said defendant is placed on probation for said period of time under the supervision of the Probation Officer of this Court, to whom said defendant shall report at such times as shall be required, and observe the usual rules and conditions of probation as said Probation Officer shall prescribe.

PAUL J. McCORMICK
United States District Judge

[Endorsed]: Filed Apr. 9, 1945. [4]

District Court of the United States
Southern District of California
Central Division

No. 15229

Criminal Indictment in 11 counts for violation of
U. S. C., Title 15 and 18,
Secs. 77q(a)(1); 88, 338.

UNITED STATES

v.

SIDNEY FISCHGRUND

JUDGMENT AND COMMITMENT

On this 9th day of April, 1945, came the United States Attorney, and the defendant Sidney Fischgrund appearing in proper person, and by counsel, Ben Blue, Esq.,

and, the defendant having been convicted on verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: count 11, conspiracy to commit certain offenses against the United States, to-wit: to wilfully violate Section 17(a)(1) of the Securities Act of 1933, and Section 215 of the Criminal Code of the United States, as charged and set forth in said 11th count of the Indictment, in violation of Title 18, United States Code, Section 88, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of One (1) year in a Federal Jail, said term of imprisonment to be suspended for a period of Two (2) years, and said defendant is placed on probation for said period of time under the supervision of the Probation Officer of this Court, to whom said defendant shall report at such times as shall be required, and observe the usual rules and conditions of probation as said Probation Officer shall prescribe.

PAUL J. McCORMICK
United States District Judge

[Endorsed]: Filed Apr. 9, 1945. [5]

District Court of the United States
Southern District of California
Central Division
No. 15229
Criminal Indictment in 11 counts for violation of
U. S. C., Title 15 and 18,
Secs. 77q(a)(1); 88, 338.

UNITED STATES
v.
CHRISTOPHER E. SCHIRM

JUDGMENT AND COMMITMENT

On this 9th day of April, 1945, came the United States Attorney, and the defendant Christopher E. Schirm appearing in proper person, and by counsel, Ben Blue, Esq., and, the defendant having been convicted on verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: count 11, conspiracy to commit certain offenses against the United States, to-wit: to wilfully violate Section 17(a)(1) of the Securities Act of 1933, and Section 215 of the Criminal Code of the United States, as charged and set forth in said 11th count of the Indictment, in violation of Title 18, United States Code, Section 88, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of One (1) year in a Federal Jail, said term of imprisonment to be suspended for a period of Two (2) years, and said

defendant is placed on probation for said period of time under the supervision of the Probation Officer of this Court, to whom said defendant shall report at such times as shall be required, and observe the usual rules and conditions of probation as said Probation Officer shall prescribe.

PAUL J. McCORMICK
United States District Judge

[Endorsed]: Filed Apr. 9, 1945. [6]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant—James H. Collins, 1236 South Holt Street, Los Angeles, California.

Name and address of appellant's attorney, David H. Cannon, 650 South Spring Street, Los Angeles 14, California.

Offense—Using mails in scheme to defraud (Sec. 338, Title 18, U. S. Code); violation of Securities Act of 1933 (Sec. 17(a)(1), Securities Act of 1933, Sec. 77q(a)(1), Title 15, U. S. C. and conspiracy (Sec. 88, Title 18, U. S. Code).

Date of judgment—April 9, 1945.

Brief description of judgment or sentence—One year in a Federal jail, said term of imprisonment to be suspended for two years and said defendant is placed on probation for said period of time under the supervision of the probation officer of this court.

Name of prison where now confined, if not bail—At liberty on own recognizance.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth

Circuit from the Judgment above-mentioned on the grounds set forth below.

JAMES H. COLLINS

Dated: April 9, 1945. [7]

Grounds of Appeal: That the verdicts acquitting the Appellant of charges embraced in Counts One to Ten, both inclusive, and convicting the Appellant of the charges in Count Eleven were and are inconsistent; that the court erred in refusing to instruct the jury to return verdicts acquitting the Appellant on each and all of the counts in the indictment; that the court erred in refusing to grant Appellant's motion for arrest of judgment; that the court erred in not furnishing the trial jury with a copy of the court's charge to the jury, or permitting such charge to be re-read to the jury, when so requested by the jury; that the trial court committed errors in the admission and rejection of evidence all duly excepted to; that there was not sufficient or any evidence to justify finding Appellant guilty.

[Endorsed]: Filed Apr. 14, 1945. [8]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant—Sidney Fischgrund, 924 Foreman Building, Los Angeles, California.

Name and address of appellant's attorneys, David H. Cannon, 650 South Spring Street, Los Angeles 14, California, and Ben L. Blue, 620 Bartlett Building, Los Angeles 14, California.

Offense—Using mails in scheme to defraud (Sec. 338, Title 18, U. S. Code); violation of Securities Act of 1933

(Sec. 17(a)(1), Securities Act of 1933, Sec. 77q(a)(1), Title 15, U. S. C.) and conspiracy (Sec. 88, Title 18, U. S. Code).

Date of judgment—April 9, 1945.

Brief description of judgment or sentence—One year in a Federal jail, said term of imprisonment to be suspended for two years and said defendant is placed on probation for said period of time under the supervision of the probation officer of this court.

Name of prison where now confined, if not bail—At liberty on own recognizance.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment above-mentioned on the grounds set forth below.

SIDNEY FISCHGRUND

Dated: April 10, 1945. [9]

Grounds of Appeal: That the verdicts acquitting the Appellant of charges embraced in Counts One to Ten, both inclusive, and convicting the Appellant of the charges in Count Eleven were and are inconsistent; that the court erred in refusing to instruct the jury to return verdicts acquitting the Appellant on each and all of the counts in the indictment; that the court erred in refusing to grant Appellant's motion for arrest of judgment; that the court erred in not furnishing the trial jury with a copy of the court's charge to the jury, or permitting such charge to be re-read to the jury, when so requested by the jury; that the trial court committed errors in the admission and rejection of evidence all duly excepted to; that there was not sufficient or any evidence to justify finding Appellant guilty.

[Endorsed]: Filed Apr. 13, 1945. [10]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant—Christopher E. Schirm, c/o Walter Lyon, Pershing Square Building, Los Angeles. Calif.

Name and address of appellant's attorney—Ben L. Blue, 620 Bartlett Building, Los Angeles, California.

Offense—Using mails in scheme to defraud (Sec. 338, Title 18, U. S. Code); violation of Securities Act of 1933 (Sec. 17(a)(1), Securities Act of 1933, Sec. 77q(a)(1), Title 15, U. S. C.) and conspiracy (Sec. 88, Title 18, U. S. Code).

Date of judgment—April 9, 1945.

Brief description of judgment or sentence—One year in a Federal jail, said term of imprisonment to be suspended for two years and said defendant is placed on probation for said period of time under the supervision of the probation officer of this court.

Name of prison where now confined, if not bail—At liberty on own recognizance.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment above-mentioned on the grounds set forth below.

CHRISTOPHER E. SCHIRM

Dated: April 10, 1945. [11]

Grounds of Appeal: That the verdicts acquitting the Appellant of charges embraced in Counts One to Ten, both inclusive, and convicting the Appellant of the charges in Count Eleven were and are inconsistent; that

the court erred in refusing to instruct the jury to return verdicts acquitting the Appellant on each and all of the counts in the indictment; that the court erred in refusing to grant Appellant's motion for arrest of judgment; that the court erred in not furnishing the trial jury with a copy of the court's charge to the jury, or permitting such charge to be re-read to the jury, when so requested by the jury; that the trial court committed errors in the admission and rejection of evidence all duly excepted to; that there was not sufficient or any evidence to justify finding Appellant guilty.

[Endorsed]: Filed Apr. 13, 1945. [12]

[Title of District Court and Cause.]

ORDER

Upon reading and filing the Stipulation herein, dated May 7, 1945, and good cause appearing,

It Is Ordered, that the Assignments of Errors, Bill of Exceptions, and Clerk's Transcript heretofore certified by the clerk of the above entitled court to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit under the latter court's No. 10846, may be adopted by reference as Assignments of Errors, Bill of Exceptions and Clerk's Transcript in connection with the notices of appeal filed with this court by said appellants on April 13 and 14, 1945.

Dated: May 8th, 1945.

PAUL J. McCORMICK
Judge, United States District Court [13]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by the parties hereto that the Assignments of Errors and Bill of Exceptions heretofore filed, and Clerk's Transcript, all of which heretofore have been certified by the clerk of this court to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit under such court's No. 10846, may be adopted by reference as Assignments of Errors, Bill of Exceptions and Clerk's Transcript in connection with the notices of appeal filed with this court by the said appellants on April 13 and 14, 1945, and which said appeal is now docketed in the United States Circuit Court of Appeals for the Ninth Circuit under its No. 11037.

It Is Further Stipulated That Honorable Paul *M.* McCormick, United States District Judge for the Southern District of California, may make an order under this stipulation in the [14] form herewith submitted, and which form bears the written endorsement of the attorneys for the parties hereto.

Dated: May 7, 1945.

DAVID H. CANNON
Attorney for James H. Collins

BEN L. BLUE
DAVID H. CANNON
Attorneys for Sidney Fischgrund

BEN L. BLUE
Attorney for Christopher E. Schirm

CHARLES H. CARR,
United States Attorney
By Charles H. Carr
U. S. Attorney

[Endorsed]: Filed May 8, 1945. [15]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 16 inclusive contain full, true and correct copies of Minute Orders Entered April 3, 1945 and April 9, 1945 respectively; Judgment and Commitment as to each of the defendants James H. Collins, Sidney Fischgrund and Christopher E. Schirm; Notice of Appeal as to each of defendants James H. Collins, Sidney Fischgrund and Christopher E. Schirm; Stipulation and Order re Adoption of Assignment of Errors, Bill of Exceptions and Clerk's Transcript and Second Supplemental Praecipe which, together with Clerk's Transcript, Bill of Exceptions, Assignment of Errors and Exhibits heretofore transmitted in connection with case No. 10846 in the United States Circuit Court of Appeals for the Ninth Circuit constitute the record on appeal to the United States Circuit Court of Appeals.

I further certify that my fees for comparing, correcting and certifying the foregoing record amount to $5.50 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 10 day of May, 1945.

[Seal; EDMUND L. SMITH, Clerk

By Theodore Hocke

Chief Deputy Clerk.

[Title of District Court and Cause.]

BILL OF EXCEPTIONS.

Be It Remembered that this cause came on regularly for trial on the 5th day of July, 1944, before the Hon. Dave W. Ling, Judge of said Court, and a jury therein being duly impaneled and sworn to try said cause, L. J. Moses, Esq., Assistant United States Attorney, and James M. Evans, Esq. and S. Manster, Esq., Special Assistants to the United States Attorney, appearing as attorneys for the plaintiff; and Thomas Morris, Esq., appearing as attorney for the defendant James H. Collins; Ben L. Blue, Esq., appearing as attorney for defendants Fred V. Gordon and Christopher E. Schirm; David H. Cannon, Esq., appearing for defendant John H. Morgan, and Sidney Fischgrund, defendant appearing in Propria Persona.

Whereupon, the trial of said cause proceeded and the following proceedings were had, and testimony, oral and documentary, was offered by the respective parties, and admitted by the court.

Mr. Cannon: Your Honor, for the sake of the record, may we have it understood that any objections made by any one of the defendants may be deemed to have been made on behalf of all the defendants unless the particular defendant who doesn't want to avail himself of it disclaims it?

The Court: Yes.

Mr. Cannon: And that any exception taken by any one of counsel will be deemed to have been taken by each of the defendants?

The Court: Yes. (Tr. 59)

ZELL TRUMAN,

a witness called on behalf of the Government, having been [2*] first duly sworn, testified as follows:

Direct Examination

By Mr. Evans:

My name is Zell Truman.

Mr. Cannon: If the Court please, counsel has handed me a certified copy of Articles of Incorporation of the Union Associated Mines Company, a Utah corporation, together with the amendments thereto, and the defense stipulates that the matter may go into evidence without further identification. (Tr. 61)

(Government Exhibit No. 1 in evidence.)

(Witness continuing)

I reside in Salt Lake City, Utah, and am an employing printer, owning a small printing business, and am a director of Union Associated Mines Company, and am Assistant Secretary. I have been a director since some time in 1935, and at one time served as Secretary of the company. I became the Secretary in 1934 or 1935, and acted as Secretary until some time in 1938, but at present I am the Assistant Secretary. While I was Secretary of the Company I had custody of the minute book and again recently I had it. (Tr. 25)

I know the defendant John Morgan and have known him since the Plymouth Oil deal came up.

Q. I will ask you whether or not at any time in 1938 you discussed with the defendant John Morgan a proposal whereby the Plymouth Oil Company agreed to convey a

*Page numbering appearing at foot of page of original Bill of Exceptions.

(Testimony of Zell Truman)

50 per cent interest in a well or wells to be drilled to the Union Associated Mines Company in exchange for stock of Union Associated Mines Company?

Mr. Blue: If the Court please, on behalf of the defendants Gordon, Schirm, Fischgrund and Collins I will object on the ground that it calls for hearsay and that no proper foundation has been laid. [3]

The Court: The witness may answer.

Mr. Blue: Exception. (Tr. 66-67)

* * * * * * * * *

Mr. Blue: I further wish to object, without the necessity of my arising each time, I would like my objection to be noted to any of these conversations outside the presence of the defendants whom I named, Gordon, Schirm, Collins and Fischgrund on the ground that it calls for hearsay, and no proper foundation has been laid.

The Court: The objection is overruled. (Tr. 67)

(Witness continuing)

The first discussions were held in the Utah Oil Building in Mr. Morgan's law office. The discussions were with a number of people. I did not talk with Mr. Morgan individually. There was a group. I was called on the telephone to come down to the Utah Oil Building, and went there and met two men from California—Mr. Siens and another man whose name I am not sure of. They made a general proposition—Mr. Morgan was there—and Mr. Weeks, who was President of the company. A proposition was made that these men had valuable oil land in California and they would exchange a 50 per cent interest in an oil well which they would guarantee to drill and bring into production for about 600,000 shares of

(Testimony of Zell Truman)

Union Associated Mining Company treasury stock. This proposition was presented by these two men from California, one of whom was Mr. Siens. (Tr. 70) We, the Union Associated Mines Company, accepted the proposition by ratification by the Board of Directors, and thereafter a contract was executed between the parties.

I am only very slightly acquainted with Mr. [4] Gordon. Mr. Gordon was in one of these meetings but whether it was the first one or not I would not say. I remember the name, and when I saw Mr. Gordon in the court room I recognized him, but I would not have recognized him had I met him casually.

Q. You say you met him once or twice at one of the meetings? One of the meetings where and what?

A. Well, as best I remember, there were two or more meetings between the Union Associated and different members of the Plymouth Oil.

Q. Where were those meetings held?

A. I think they were all held at Mr. Morgan's office.

Q. In Salt Lake City? A. In Salt Lake City.

Q. And approximately when were they held, about what time?

A. It would be in the summer of 1938. The minute book will show.

Q. And did you have any discussion with Mr. Gordon about the proposal to transfer interest from Plymouth Oil Company for Union Associated stock?

A. There was general discussion, yes.

Q. Did you have any particular discussion with Mr. Gordon?

A. Well, I cannot remember whether it was Mr. Gordon or some of the others. There were either two or more of these men in the discussions.

(Testimony of Zell Truman)

Q. I will ask you whether or not you have ever met the defendant James H. Collins?

A. I think I have but I don't place him.

Q. Do you recognize the gentleman seated back here?

A. No, I would not identify him. (Tr 71-72) [5]

(Witness continuing)

I think I followed Reva Perry Olsen as assistant secretary of Union Associated Mines Company. Mr. Morgan succeeded me as secretary of that company. In my business as a printer in Salt Lake City I did printing work for the Union Associated Mines and for Mr. Morgan. I printed some stock certificates of the Union Associated Mines Company and also some letters on behalf of that company. I printed about five hundred each of the letters which have been marked as Plaintiff's Exhibits 2, 3, 4 and 5 for identification, as I now remember, because that is the usual number. The orders came in mostly from Mr. Morgan, although I believe that first letter dated September 29, 1938, was kind of a joint affair. It is over my signature. (Tr. 73) I think Morgan and I talked it over together. Morgan placed the orders for exhibits 3, 4 and 5 identification. Exhibit 2, dated September 29, 1938, was printed at or about that date, and the other exhibits 3, 4 and 5 were printed on or about the dates they bear. I received the information that went into these letters mostly from Mr. Morgan, but I think I wrote the copy on the first letter, Exhibit No. 2. (Tr. 74) Soon after the deal was made with the Plymouth, in 1938 or '39, I printed stock certificates for the Union Associated Mines Company. You have my records, and I could tell exactly by looking at those

(Testimony of Zell Truman)

records. (Tr. 75) After Exhibits 2, 3, 4 and 5 for identification were printed, I delivered the printed copies to Mr. Morgan's office. I printed 1000 blank stock certificates for Union Associated Mines Company in January, 1939, and mailed part of them to Mr. Siens in Los Angeles. I became a Director and Secretary of the Union Associated in 1935 in February. Morgan became an Officer or a Director of that company in September, 1938, but to my knowledge he [6] had not been an Officer or Director of that Company previously.

(It was stipulated that the Union Associated Mines Company was suspended for non-payment of franchise fees and tax in the State of Utah.) (Tr. 81)

(Witness continuing)

This suspension of the Union Associated was prior to September, 1938, and the corporate privileges of that company were restored after September, 1938. S. A. Perry was President of Union Associated Mines Company when it was incorporated and continued as President until he died in July, 1935. Just prior to September, 1938, and for some time previous, the company was not conducting any active business; but it was incorporated to engage in a mining business and it was so engaged in 1936, when I conducted a limited amount of development or prospecting when I worked on a placer mining machine, and in about three days' work we sold the gold for $7.00, which was the last actual sale. (Tr. 87) That was some time in 1936. Up to September 1, 1938, the Union Associated Mines Company had never paid dividends on its stock.

(Testimony of Zell Truman)

Q. By Mr. Evans: I will ask you whether or not up to September 1, 1938, any assessments had been levied upon the stock of Union Associated Mines Company?

Mr. Cannon: I object to that, if the Court please, to this line of interrogation, and without my restating it each time may it be understood that I object to this line of interrogation, to each question thereof, and take an exception to your Honor's ruling in the event your Honor overrules the objection, on the ground it is hearsay to each and all of these defendants, it is outside the realm of the pleadings of the indictment. [7]

The Court: All right, go ahead. Objection overruled.

Mr. Cannon: May I have that understanding?

The Court: Yes. (Tr. 87-88)

(Witness continuing)

There was a total of eight assessments levied upon the stock of that Company, between the date it started about 1931 or 1932 and 1935. When the Plymouth-Union deal was proposed, Mr. Gordon was present at some of those discussions and I had a personal discussion with him, at least one, but perhaps twice; it was either on the first or second meeting, and would be prior to or about September 8, 1938. The discussions were in Mr. Morgan's office and I am quite sure that Mr. Siens was present, on either one or two occasions. At the first meeting, I cannot say who was present, but I asked the representatives what they were going to do with the stock of the Union Associated Mines Company which they acquired, and at that time they said they would sell the stock to raise the money to drill the well. I asked them if they sold the stock what they would get out of it, and they said they would have a

(Testimony of Zell Truman)

half interest in the producing well and that they might be able to raise the money and do the drilling themselves, and in that case they would have the 635,000 shares of Union Associated stock as their profit. (Tr. 91) By "they" I meant the Plymouth, the outfit that was making the proposition. Something was said by Mr. Gordon or Mr. Siens to me about selling their stock, the first idea being that they would sell the stock to raise the money to drill the well. Then, as they would raise the money outside the sale of the stock, there was nothing definitely said what they would do with the stock, whether it was to be sold or held. (Tr. 92) There was nothing said about what the value of the stock might be, but [8] the idea was that the stock would increase in value. Something was said by Mr. Gordon or Mr. Siens that they had connections with brokerage firms and were positive that they could place the stock to good advantage to raise sufficient money to do the drilling.

(At this point a stipulation was made that certain photostat copies of certain pages of the minute book of Union Associated Mines Company might be offered and received in evidence. and they were offered and received in evidence without further foundation, as Government Exhibit No. 6, with the following reservation:)

Mr. Blue: If the Court please, I have no objection so far as the foundation is concerned except that on behalf of the other defendants I object to the minutes as set forth on the ground it is hearsay as to them, and there is no foundation as yet laid as to in any way connect any of the defendants with the preparation of these minutes, and I therefore urge that objection to them.

(Testimony of Zell Truman)

Mr. Evans: Do I understand you correctly, Mr. Blue, that you are stipulating on behalf of all the other defendants that the—

Mr. Blue: They are the minutes. There is no question about that.

Mr. Evans: —Union Associated Mines Company and may be introduced subject to your objection as to their competency and relevancy and materiality?

Mr. Blue: And it is definitely hearsay as far as the other defendants (except Morgan) are concerned.

The Court: All right. They may be received.

Mr. Blue: Exception. (Tr. 94-95) [9]

Cross-Examination

By Mr. Cannon:

I first became acquainted with Mr. Morgan in 1938, but since then I have known him very well indeed. They call him "Judge" or "Jack". I became associated with Union Associated Mines Company in 1935, and remained a Director ever since that time. I was first secretary and then became assistant secretary to Mr. Morgan, and during the whole of the time which Morgan was secretary I was acting as assistant secretary. Later Mr. Morgan resigned as secretary, but I do not think he resigned as a Director. After he resigned as secretary I became secretary. (Tr. 98) During the time that I have been a Director of this Company I have done my very best with it and I have never consented to the doing of anything that I thought was dishonest. Neither has Mr. Morgan done anything that was dishonest, so far as I know. His reputation in Salt Lake City is good, as far as I know, and the people with whom I have been most closely

(Testimony of Zell Truman)

associated with Mr. Morgan regard him as a man of good reputation. I was the author of Government Exhibit No. 2 with Mr. Morgan's consent, and he and I discussed and I made suggestions with respect to exhibits 3, 4 and 5 for identification. For printing of these Exhibits 2, 3, 4 and 5 for identification, I charged a normal price that I would usually charge for such a job. And I was paid for it. I absolutely did not knowingly make any misrepresentation or false statements in any of the letters that I prepared, or in which I assisted in the preparation.

Cross-Examination

By Mr. Blue:

My memory is not quite as good as it was some time ago. During my tenure of office as either a director or assistant secretary or secretary of Union Associated Mines, I [10] have never taken any direction from Gordon, Fischgrund, or Davis, and I have not contacted them in any way. I think I have never met Mr. Schirm. I met Mr. Siens about three different times. I met him more than any other man in the deal. (Tr. 102) After September, 1938, we had a directors' meeting, when the old directors resigned and new ones were elected, but who was present at that time I would not say. But after the first meeting I do not believe that anyone was at our meetings representing the Plymouth Oil Company. At one time, I realized that the Plymouth Oil Company owned the control of Union Associated Mines Company, but I was not exactly worried but wondered how it would work out. At one time, I remember Siens called while there were three of us directors present, Mr. Weeks was there and I was, and one other, but I am satisfied that Mr.

(Testimony of Zell Truman)

Morgan was not there, although it was held in his office. Siens told us that we need not be worried about the Plymouth controlling the Union Associated. He said that at one time he had taken a company similar to Union, built it up, and then had been cheated out of it, and that he was now going to make a real company with value, and he wanted a board of directors on the Union Associated that were just plain business men; they did not have to be oil men because we could get oil experts to give us all the advice and assistance we needed, but that he wanted plain business men that would stand behind him and would not sell him out. (Tr. 104) There has at no time been any direction from the Plymouth Oil Company as to our procedure. There has only been very, very little money derived from our operations or from our ownerships in property. The amount of money Union Associated Mines Company got from its interest in the 50 per cent ownership in Plymouth Oil Well No. 1 from December, 1938, and thereafter until December, 1939, shows on [11] the record, but I know it is correct that Union Associated Mines Company received more from its operation and ownership of Plymouth Oil Well No. 1 than it received in all the years that it had owned mining property prior to that time. I cannot say whether or not I have ever met Mr. Collins; I think I have but I don't remember the man. (Tr. 107)

Re-Direct Examination

By Mr. Evans:

My signature appears on page numbered 21 of Exhibit 7 for identification, which is a copy of the registration statement filed with the Securities and Exchange Commission. (Tr. 107) It was prepared by Mr. Perry, the

(Testimony of Zell Truman)

auditor at that time, and I signed it as assistant secretary; but I did not compile any of the information, nor collect any of the information set out in Exhibit 7 for identification. I took Mr. Perry's word for it that the matter contained in Exhibit 7 for identification was correct. I must have signed this document about January 16, 1939. Prior to September 1, 1938, the stock of Union Associated Mines Company was listed on the Salt Lake City Stock Exchange; that was before Mr. Perry died in 1935; that listing continued for a year or so after Mr. Perry died, and I was unable to furnish the proper statements concerning the business without employing an auditor. At that time the auditor would have cost us $100.00 or more, and I did not have $100.00 so it sort of went by default and it was taken off the board. That was in 1936, or possibly 1937. (Tr. 111) There was one dividend only paid by the company and that was paid after the money was derived from the Torrance Oil Field well, and it was paid on August 30, 1939, and amounted to $1.00 per 1,000 shares. I was present at the directors' meeting of Union Associated when it was resolved to declare that dividend. (Tr. 111) The board of directors' meeting on [12] August 11, 1939, appearing on page 148 of Exhibit 6, authorized that dividend. I discussed the matter with Mr. Morgan and told him I did not think it was good business to pay the dividend, and I told him we should use that money in developing the business. Mr. Morgan said that it was the idea that the brokers had conveyed in putting out the stock that it would pay dividends, and it was necessary to pay a dividend in order

(Testimony of Zell Truman)

to clear the records. (Tr. 113) From the time Mr. Morgan became secretary, I received my orders from Mr. Morgan who as far as I know directed the policy of Union Associated.

Recross-Examination

By Mr. Cannon:

After Mr. Morgan became secretary, John Clayton was president; William Weeks, I think, vice-president, and Morgan was secretary-treasurer, and I assistant secretary. Mr. Brown was a director and Mr. Burch. Brown is an engineer for the Highland Boy Smelter in Murray, and I accepted him as a good, practical business man. I do not know Burch very well, but I understood he was pretty well off financially and he may have been a wealthy cattle man of Utah. (Tr. 114) I thought the other men who were directors were solid, substantial business men. Morgan and I had differences of views with respect to the propriety of paying the dividend. Personally, I did not think it was good business to pay it, although I knew the company had a surplus with which to pay it, and the matter was formally considered by the board of directors, and I exercised my best judgment and voted for it. As far as I know, the other directors used their best judgment. The Union Associated was listed on the Salt Lake Stock Exchange. I do not know how high it sold on the Exchange, but I got a letter from one stockholder while I was an executive saying that he [13] had paid as high as 40 cents a share for it. I know it sold on the Salt Lake Exchange as high as 25 cents a share for a considerable period; at least I would think so, although I did not follow it. When the Union Associated Mines Company stock

(Testimony of Zell Truman)

was selling on the Salt Lake Stock Exchange at upwards of 20 cents a share they still had only the mining properties which they had at the time of the Plymouth deal; and when the Plymouth Oil Company deal was made the Union Associated Mines Company reinstated its mining claims. The directors of the company thought well enough of those mining claims to relocate them, although I personally did not; but I thought enough of them to keep my own stock, and I also advised the people who owned stock in the Union Associated Mines Company to keep their stock. I advised them by a circular letter that I myself composed. I gave this advice to them, as a business man, and as an investor in the Union Associated Mines Company, and as a director of that company, and as an officer. (Tr. 118) I thought the Plymouth oil deal was a good deal, and I held my stock all of the time, even with a rise in the market; and I still have it. I did not feel justified in selling my stock for two or three cents because I expected it to go a little higher, because I knew from my experience that the stock had gone considerably higher on the Salt Lake Stock Exchange. I thought that the interest that the company had in the well justified the value of the stock.

Re-Cross Examination

By Mr. Blue:

I suppose all of the income that the Union Associated got after it got its interest in the Plymouth well, came from the Standard Oil Company of California by that

(Testimony of Zell Truman)

Company's checks. I received a dividend on the stock that [14] I owned in the Union Associated Mines Company. I owned 9,500 shares. The Union Associated Mines Company is still in existence and is functioning in a way. Since that Company's deal with Plymouth in September, 1938, in addition to receiving the 50 per cent interest in the Plymouth No. 1 well in exchange for 635,000 shares of Union Associated stock, at the same time and in consideration for this 635,000 shares of stock, the Union Associated received a 25 per cent interest in a lease known as the Factory Center lease consisting of 70 acres. (Tr. 121) I think also an acre of land in Lomita, and in consideration of additional stock of Union Associated, that company received a 40 per cent participating interest in a well known as Plymouth Well No. 2. I thought it was 600,000 shares for the second well, and in addition the company acquired certain interest in leases in Wyoming, which the company still owns. I understand wells are drilling in the vicinity of those particular leases owned by the company in Wyoming. I do not know that any one connected with th Plymouth Oil Company, either Mr. Gordon, Mr. Fischgrund, or Mr. Davis, was consulted in reference to the acquisition of these leases in Wyoming. Since the deal was made with Plymouth in 1938, the Union Associated acquired sufficient money to pay assessments owed to the Government for relocation on some of the property; and in addition the Union Associated acquired other property, interest in oil properties, and still

(Testimony of Zell Truman)

owns those interests. The stock issued by Union Associated Mines Company for its interest in Plymouth Well No. 1 was issued ex-dividend. It was stipulated that none of this stock was ever sold. (Tr. 124) (Plaintiff's Exhibit No. 2 was offered and received in evidence.) [15]

Re-Direct Examination

By Mr. Evans:

Union Associated Mines Company did not receive anything in the way of income from any oil production from Plymouth Well No. 2. Prior to the Plymouth deal in September, 1938, the Union Associated had not done the necessary assessment work on their claims, and the claims had to be relocated by reason of the fact that the company had lost any rights to the claims. At the initiation of the Plymouth-Union deal in September, 1938, Union stock was selling in Salt Lake City at less than one cent a share, but there was no standard market for it, and very little stock was changing hands. (Tr. 127)

Recross-Examination

By Mr. Cannon:

Union Associated did not own any patented lands anywhere, I think.

(Witness excused.)

(At this point Mr. Cannon read to the jury the letter of September 29, 1938, offered and received in evidence as Government Exhibit 2, reading as follows:)

[PLAINTIFF'S EXHIBIT NO. 2]

R. R. Bray,
President

J. H. Morgan,
Secretary-Treasurer

UNION ASSOCIATED MINES COMPANY
Telephone Wasatch 2130
Suite 526 Utah Oil Bldg.
Salt Lake City, Utah

September 29, 1938.

Dear Stockholder:

Since I have been sending out news letters for the Union Associated Mines Co. over my own signature it has been bad—worse—worst—until it seemed the bottom had been reached and nothing worse could be said. This time I am very thankful that the message is much more optimistic.

A deal has been made that gives the Union Associated a good chance to become a paying investment. Briefly, the *Py*mouth Oil Company has assigned to the Union Associated 50% of the gross production from a well now being drilled at Torrence; 25% of a 70-acre lease in Wilmington, and 25% in a 1-acre tract at Lomita, all in Los Angeles Basin, California, in consideration of a block of treasury stock. There will be no assessments or expense to the Union Associated stockholders, and more than one-half of the stock will be left in the treasury when the deal is completed.

The Parry family and Director Chytraus interests have been purchased, and a new Board of Directors formed. Wm. Weeks and the writer are the only old members on the new board.

(Plaintiff's Exhibit No. 2)

The new President, R. R. Bray, is an oil man of many years experience in practical oil drilling and thoroughly familiar with the California fields. There are wells on practically every site of our proposed site that have been producing from about the 3,500-foot level. Lately an adventurous company went on down and brought in a fine well at about 5,000 feet. Mr. Bray states, in the light of present developments, the prospects are very good for bringing in a good well at approximately 5,000 feet. The officers of the *P*ymouth Oil Company impress me as alert business men who know the oil game. They expect to make money for themselves but if they succeed they will also make money for us, as Union Associated stockholders.

Mr. J. H. Morgan, a well-known attorney, with offices at 526 Utah Oil Building, Salt Lake City, Utah, is the new Secretary-Treasurer. Mr. Morgan has clerical help and is much better prepared to handle the business of the company than the writer.

However, both "Billy" Weeks and myself are holding all of our interests in the Company and will be active on the Board of Directors, giving the new management all the assistance in our power.

Of course, the shares you own in the Union Associated, if you have met the past assessments, belong to you, and you are free to dispose of them in any manner you desire, however, our advise is Do Not Sell Them, hold them, and feel free to write us for further information about your Company's progress.

The Company holds the mining property in Big Cottonwood Canyon which can be developed if we bring in a producing oil well.

(Plaintiff's Exhibit No. 2)

The new management desires to express their appreciation to the present loyal stockholders who have carried the load so long, and promise their best efforts to make the Company an asset instead of a liability.

Any stockholder who wishes can address me as heretofore, but the Company business will be carried on at the new address.

Earnestly hoping that the new deal will place Union Associated on the highway of prosperity, I remain,

Sincerely,

UNION ASSOCIATED MINES CO.
Zell Truman, former Manager-Secretary.

New Address
UNION ASSOCIATED MINES CO.
J. H. Morgan, Sec.-Treas.
526 Utah Oil Building
Salt Lake City, Utah

[Endorsed]: Securities and Exchange Commission. Docket No. D 515. Commission's Exhibit No. 223. In the Matter of Union Asso'd Mines. Date 1/20/41. Witness Morgan. Smith & Hulse, Official Reporters; by Garnett.

[Endorsed]: Case No. 15229. U. S. vs. Collins et al. Pltfs. Exhibit No. 2 Identification. Date Jul. 6, 1944. No. 2 in Evidence. Date Jul. 7, 1944. Clerk, U. S. District Court, Sou. Dist. of Calif. E. N. Frankenberger. Deputy Clerk.

ARTHUR P. ADKISSON,

a witness called by and on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Manster:

My name is Arthur P. Adkisson and I live at 130 [16] Linden Avenue, Long Beach, and by occupation I am a broker and salesman for Mitchum, Tully & Co. (Tr. 132), by whom I have been employed for a little over a year. I am manager of their Long Beach office, and have been engaged in the brokerage business since 1926 in my own behalf or as an employee of different firms. I was with the firm of Fewell, Marasche & Company, who were members of the Los Angeles Stock Exchange, in 1937 and 1938, and since that time I have joined Mitchum, Tully & Company. I was a salesman at Fewell, Marasche, and at one time occupied a seat on the Los Angeles Stock Exchange, and have been engaged in the securities business upwards of 20 years. I have a fair general knowledge of the securities business and the operation of securities markets.

Mr. Cannon: We will admit he is an expert.

Mr. Manster: No, I am not trying to qualify him for that purpose unless you wish to. My questions are not directed for that purpose.

Mr. Blue: Then I object on the ground they are immaterial.

The Court: That is what I think. [17]

Q. By Mr. Manster: Have you conducted transactions on the Los Angeles Stock Exchange?

A. Well, I have accepted orders to buy and sell, yes.

Q. Do you know how the Stock Exchange operates?

A. Yes.

(Testimony of Arthur P. Adkisson)

Q. Have you bought and sold stock in the over-the-counter markets? A. Yes.

Q. Do you know in a general way how the over-the-counter market operates? A. Yes.

Mr. Blue: We will stipulate that the man is an expert. Otherwise, if that is not the purpose of the examination, I object on the ground the examination is immaterial.

The Court: That could be the only purpose.

Mr. Manster: I am willing to accept the stipulation, Judge.

The Court: Very well. (Tr. 134)

(Witness continuing)

I have known the defendant Gordon over a period of 15 or 20 years, and have effected transactions for him, and I am friendly with him, and also with Mr. Cannon. I know Mr. Fischgrund, but did not know him prior to September or [17a] August, 1938. I know Mr. Collins, having met him in 1937 or early 1938, when he came to work for the firm that I was with. I know Mr. Schirm through his associated with Mr. Gordon; and I know Mr. Morgan. I believe I met him before August, 1938, in Los Angeles. I first had connection with the transactions between Plymouth and Union about August, 1938, when I received a call from Mr. Gordon, who told me that he had been talking to Mr. Siens whom I did not know at the time, and that if I would go to see Siens at the office of the Plymouth Oil Company, he thought he might have something of interest to me. I went to see Siens and had a talk with him.

(Testimony of Arthur P. Adkisson)

Mr. Cannon: I object to it as far as Mr. Morgan is concerned and all the other defendants on the ground that it is hearsay.

The Court: All right.

Mr. Cannon: May I have an understanding that that objection goes to this entire conversation without my having to make the objection, and take an exception to your Honor's ruling?

The Court: Yes. (Tr. 137)

(Witness continuing)

Siens told me that he had received a letter through Mr. Schirm from Mr. Morgan, stating that there was a company in Salt Lake whose stock could be acquired very reasonably, that there were quite a few shares of stock in the treasury; that the stock was formerly listed on the Salt Lake Stock Exchange and was fairly well known in Salt Lake. Siens said that if we could acquire this stock in the mining company and put oil properties into the company for an exchange of stock, and make the stock valuable, and have the stock re-listed, we [18] could enjoy the benefits of the market. (Tr. 138) He said that the idea was to put oil properties into the company in exchange for stock. Within a week or so after that conversation with Siens, he and I drove to Salt Lake City and contacted Mr. Morgan and talked with him about the stock of this mining company, the Union Associated Mines. Morgan said that he had an option on the stock, or that his brother-in-law had such option; that the stock belonged to some family there, and the head of this family had been the president of the Union Associated. Morgan said the option was on approximately 200,000 shares, and

(Testimony of Arthur P. Adkisson)

that there were about 700,000 shares of stock outstanding in the hands of the public and about 350,000 scattered outside of the State of Utah, and that the balance was held in Salt Lake; in other words, about 350,000 of the 700,000 were in and around Salt Lake. When we first started to talk about the stock, it turned out that they did not have a firm option on the stock, but they thought they could get it from the family in Salt Lake, but the price had not been determined. We told Mr. Morgan that our plan was to put oil properties into the Union Associated Mines Company (Tr. 140) in exchange for stock of the Union Associated. This first trip to Salt Lake was in August, 1938, and we finally got down to the point of getting the stock, and paying for it, we found that there was not any money available as Siens did not have any money with him. So I told Siens I would come back to Los Angeles and see if I could raise the money. I came back and contacted Mr. L. R. Julian, a partner in the firm of Marasche and Company. The price I was to pay for the 200,00 shares was $800.00, or two-fifths of a cent a share. I raised the $800.00 from Mr. A. A. Julian, a brother of L. R. Julian, and I took the $800.00 cash to the California Bank in Los Angeles and telegraphed it [19] to the Walker Bank in Salt Lake City with instructions to pay the money to Morgan when they received in exchange approximately 200,000 shares of Union Associated Mines stock. Eventually Morgan transmitted the 200,000 share block of stock to Mr. Siens. Under date of September 2, 1938, I, and Mr. Siens, and A. A. Julian signed a contract which you have now shown me.

(The document referred to was marked Plaintiff's Exhibit 8, and was received in evidence.)

(Testimony of Arthur P. Adkisson)

(Witness continuing)

Under this contract Mr. Julian was to receive $1500.00 in return for his advance of $800.00.

(At this point, Plaintiff's Exhibit 8 was read to the jury by Mr. Manster, and is as follows:)

[PLAINTIFF'S EXHIBIT NO. 8]

This Agreement, made and entered into this the second day of September 1938, by and between Arthur P. Adkisson and E. B. Siens hereafter referred to as parties of the first part and A. A. Julian hereafter referred to as party of the second part.

Witnesseth:

That whereas the said party of the second part has paid $800 in cash for the purchase of 200,000 shares of stock of the Union Associated Mines Co. of Salt Lake City, Utah. Said stock to be issued in his name and delivered to and held by him subject to the following provisions hereinafter set forth:

Enough of the 200,000 shares is to be sold by said party of the first part at such time and at such price as he may deem proper to net him $1500 in cash. When this has been accomplished the remainder of the 200,000 shares shall be divided equally among the three parties whose names are signed to this agreement, and delivered to the respective parties.

As a part of the consideration for the purchase of this stock *for* the parties herein mentioned, it is agreed by the said parties of the first part that the Plymouth Oil

(Plaintiff's Exhibit No. 8)

Co. of Los Angeles California will consumate a contract to the Union Associated Mines Co. in which the Plymouth Oil Co. wil agree to drill a well on a location next to the Silver Strand Oil Co., well in the Torrence field in Los Angeles county and assign to the Union Associated Mines Co., fifty percent of all the oil and gas received from said well. In return for the 50% referred to above the Union Associated Mines Co., will issue to the Plymouth Oil Co., 635,000 shares of its stock now held in its treasury. It is further to be agreed by the Plymouth Oil Co., that all moneyes received from the sale of all or any portion of the above 635,000 shares will be paid to the party of the second part until he has received $1500 in cash in part satisfaction of this agreement. It is further understood and agreed that as a part of the consideration of this contract the Plymouth Oil Co. will agree to deliver said stock to the party of the second part when requested.

It is further understood and agreed that when, as, and if any portion of the above 635,000 shares of stock is sold by party of the second part that it shall not be sold below the street market on said stock at Los Angeles or Salt Lake City whichever market is the highest.

It is further understood and agreed that as part of the consideration for this contract that the Plymouth Oil Co. will appoint Arthur P. Adkisson to sell and handle the above 635,000 shares of stock and that he has exclusive right to sell said stock at such price as may be mutually agreed on by himself and the Plymouth Oil Co. and that

(Plaintiff's Exhibit No. 8)

they will give him a written contract to that effect. This however shall in no way conflict with the right given herein to the party of the second part to sell 635,000 shares as described above until he has received the sum of $1500.

The parties of the first part agree to use their best efforts in promoting the success of said Union Associated Mines Co.

Nothing in this contract shall be interpreted in such a way as to give to said party of the second part more than a total sum of $1500., cash and the stock referred to above.

In Witness Whereof, the parties hereto have set their hand and seal this the second day of September, 1938.

Arthur P. Adkisson
Arthur P. Adkisson, First Party

E. Byron Siens
E. B. Siens, First Party

A. A. Julian
A. A. Julian, Second Party

[Endorsed]: Case No. 15229. U. S. vs. Collins et al. Pltfs. Exhibit No. 8 in Evidence. Date Jul. 7, 1944. Clerk, U. S. District Court, Sou. Dist. of Calif. E. N. Frankenberger, Deputy Clerk.

(Witness Adkisson temporarily withdrawn.)

LYMAN L. CROMER,

a witness called by and on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Manster:

My name is Lyman L. Cromer and I live in Salt Lake City and I am a securities dealer, associated with my partner, Mr. Val S. Snow (Tr. 152) with whom I have been associated about 13 years. I was associated with him in 1938 and 1939. The transactions between Plymouth and the Union Company first came to my attention in the early fall of 1938. I know Mr. Barclay of Salt Lake City who was President of the Salt Lake Stock and Mining Exchange and who was also a securities dealer there. [20] I know Mr. John H. Morgan, and in the early fall of 1938 had conversations and transactions with Barclay and Morgan in connection with Union Associated Mines Company stock.

Q. Well, now, fixing as best you can the time, places and circumstances of these conversations, would you tell us first the conversations you had with Mr. Barclay in your own words, just how this came about and what was said with reference to any deal between Union Associated Mines Company and the Plymouth Oil Company?

Mr. Blue: Just a moment. On behalf of the defendants Fischgrund, Gordon, Schirm and Collins I object to these conversations on the ground that it is hearsay, no proper foundation has been laid as to them, and it is incompetent.

The Court: Overruled.

(Testimony of Lyman L. Cromer)

Mr. Blue: I wish to note an exception, and it will be understood that my objection goes to all of this testimony without the necessity of restating the objection?

The Court: It may. (Tr. 153)

(Witness continuing)

Some time in September, 1938, Barclay told me of a deal between Union Associated Mines Company and the Plymouth Oil Company. Union Associated had been listed previously on the Salt Lake Stock Exchange and had been turned to the wall; they had not paid their fee which they should have paid to the Salt Lake Stock Exchange and the stock had been taken off the Exchange, but Barclay told me through this deal with the Plymouth Oil Company of California that it would be listed again on the Exchange; the Plymouth was to get from Union 635,000 shares of its stock for one-half interest in a well to be drilled down in the Torrance field in California; and Barclay said he was going to see that this stock was listed again, and the [21] Company was out of debt, and from the sale of the oil it was to pay dividends. He told me that there was a chance to make money there for myself and for my customers and to buy some stock. (Tr. 155) He said Union Associated was to deliver 635,000 shares of its stock to the Plymouth, and the Plymouth was going to drill the well and give the Union Associated a one-half interest in the returns from the oil well; that the Union Company would have no expense; and that there was a man by the name of Lacy, who was in the banking business, who was going to pay all of the expenses of drilling this well; that they expected the stock to go to $2.00 or $3.00 a share; that he had been down to Cali-

(Testimony of Lyman L. Cromer)

fornia, and that it was a very good field, and if I wanted to get in to get in right away. At that time, September, 1938, there was no value that I know of to the stock; I guess you could have bought all you wanted at one-quarter of a cent a share, or $2.50 a thousand. I placed the utmost confidence on Barclay's representation. He was president of the Exchange and a personal friend of mine. Barclay told me the first time I talked with him about the deal, that he would receive 300,000 shares of stock with which to hold the market down on Union Associated, so that there would not be a runaway market at that time; and that in a short time, as soon as this drilling had started, the stock would go up in leaps and bounds and for me to get in at that time and tell my customers about it; and he would sell me as much of the stock as I wanted. (Tr. 156) He told me he had told the Plymouth people that he would see that the stock was listed when the time came, and when re-listed it would be called at twenty-five cents a share, and he offered me an option at that time on 100,000 shares at 5 cents, which, after I talked with Mr. Snow, we turned down and did not take. After these conver- [22] sations with Barclay, our firm bought for our customers about 200,000 shares. We sold it all to customers. Barclay told me that they had a bunch of high-pressure salesmen down in Los Angeles who were going to sell this stock as soon as the oil came in. He did not give me any names at that time, I think. (Tr. 158) I saw various telegrams posted on the floor of the Salt Lake Stock Exchange at that time with reference to the drilling operations of the Plymouth well.

Mr. Cannon: At this time, in view of the fact that Mr. Blue's objection to the entire line of testimony did not

(Testimony of Lyman L. Cromer)

include Mr. Morgan, I want to join in the objection made heretofore by Mr. Blue with your Honor's consent as far as any conversations had by this witness with Mr. Barclay in the absence of Mr. Morgan are concerned, on the ground that it is hearsay and is immaterial as far as he is concerned. May I have the same objection running throughout the testimony with respect to that matter?

The Court: Yes.

Mr. Cannon: Thank you, and an exception noted. (Tr. 159)

(Witness continuing)

When the well was spudded a telegram came in, and every few days as the progress of the drilling went on, telegrams came either to Mr. Barclay or to the Exchange and were posted on the board. I remember some of the telegrams.

(At this point a group of 9 telegrams were offered and were marked as Government Exhibit No. 9 for identification.)

(Witness continuing) [23]

Q. By Mr. Manster: Now, having seen this group Exhibit No. 9, does that refresh your recollection with reference to seeing telegrams on the floor of the Stock Exchange in respect to drilling operations of that Plymouth well? A. Yes. (Tr. 161)

I talked with Barclay about the contents of these telegrams; he called me over to his office and showed them to me. Barclay called me up at the time he heard that the [23a] well had come in, on December 13, 1938, and told

(Testimony of Lyman L. Cromer)

me that the well had come in at about 1,000 barrels; that it was the best well they had brought in in this field; and told me when I first talked with him that they were going to pay dividends with the money from this well. About the same time I had conversations with the defendan Morgan. (Tr. 163) He said that they intended to pay dividends if the well produced, and he thought it was a very good proposition. After the well came in, and I had talked to Barclay and he had told me that it was a 1,000 barrel well and a big well, Morgan told me that it was not so, that it was a smaller well. I think if I remember correctly it was around 250 barrels, and that it was not the largest well around there. Throughout 1939 I talked with Morgan two or three times a week, I think; I would call him up and ask him how things were coming, and my customers began to wonder what was the matter with the stock and why the price did not go up any more. So I asked Morgan how things were going and what the matter was. He told me, as I remember, that the wells were petering out, or that the first well did, and the wells were not producing as they had anticipated. So I began to have my customers call Mr. Morgan direct. I asked Morgan when they were going to pay dividends, and he said sufficient money was not coming in to pay them. (Tr. 167) Although, he did tell me they were going to try to pay a small dividend. Morgan gave as a reason or explanation why the company should pay a dividend when the wells were in fact petering out, that they had promised to pay a dividend from the money that they derived from the well, and the company was out of debt. I do not think he suggested anything with reference to the market in the stock if the dividends were paid. I think

(Testimony of Lyman L. Cromer)

our firm sold about 200,000 shares of this [24] stock to its customers in and around Salt Lake, between the time the well came in in December, 1938, until about the time the dividend was paid in August, 1939, at an average price of 3 cents a share. About the time that these telegrams with reference to the drilling operations of the Plymouth well began to be posted on the Exchange, the stock was selling about 3 cents a share. It jumped from practically nothing up to 2 or 3 cents a share, and held at 3 cents all of the time the drilling operations were going on; there might have been a variation of a half a cent a share, that is, from 2½ to 3 cents. (Tr. 169) Mr. Snow made a trip down to California with Barclay, but I made no independent investigation and did not go down to Los Angeles, or look at the well. I talked with Collins at one time, but did not talk to Fischgrund, Davis, Schirm, or Gordon. I placed reliance upon the statements made to me about the deal by Barclay and Morgan. Morgan told me he thought it was a good proposition for the Union Associated. I told him I had bought some stock personally. He told me he thought I had made a good investment, and Mr. Snow bought some stock, and he was very optimistic about the future of the company. Morgan told me, as I remember, that approximately the first well produced around 200 or 250 barrels; and told me dividends would be paid, but he did not say how much they would be. I placed confidence in what he told me, but I did not discuss with him the things that Barclay had told me about the company and the proposition. (Tr. 172) I do not recognize Mr. Collins here. I talked with him for about five minutes and it has been a long time ago and I do not recognize Mr. Collins now. I have not seen him since.

(Testimony of Lyman L. Cromer)

Mr. Morgan introduced me to a James H. Collins in the fall of 1938 in Salt Lake. I asked this man about the deal and he told me it was a good proposition. I told him I [25] was selling it to my customers, and at that time he showed me an option of some kind that he had there. There was another man that was in Salt Lake and he told me he had an option on the stock, and I remember, the top figure was 35 cents a share. It started out low and went up. (Tr. 174) He had an option on so many shares at one figure, and so many many shares at another figure and it varied from 2½ cents to 35 cents, as I remember it. It was a written option to buy stock at gradually increasing prices. I do not recall any further conversation I had with Mr. Collins with reference to the option. (Tr. 175)

Cross-Examination

By Mr. Blue:

I have been a broker about 15 years, and prior to that I was in the mining business, as secretary of mining companies, some of which were listed on the Salt Lake Stock Exchange and some of which were not. I am a partner with Mr. Snow and we are licensed under the Securities & Exchange Commission, and as such make reports to that Commission. The Salt Lake Stock Exchange has on its board mostly mining stocks; no industrials; only one oil company, the Crescent Eagle Oil Company. Stocks on that Exchange have had a wide fluctuation, even Union Associated, when it was listed. (Tr. 178) I do not remember the high on Union Associated when it was listed (Tr. 178), prior to 1938. I do not remember that it went as high as 40 cents. When it was listed, prior to 1938, it had some mining property in

(Testimony of Lyman L. Cromer)

Cottonwood Canyon, and other different claims that were not developed. I do not know whether or not they were producing any ore. If a customer gave me an order to buy or sell, I would execute the order. I relied on Mr. Barclay's repre- [26] sentation. He is dead now. When Barclay told me that the well had come in for 1,000 barrels, Mr. Morgan told me that it was 200 or 250 barrels, but I did not go back to Barclay and tell Barclay what Morgan had told me. I do not know why I did not. I told Snow, and he decided to make a trip down here to find out something about it, and he did come down. When Morgan told me that it was not the largest well, as Mr. Barclay had told me it was, I did not go back and tell Barclay what Morgan had told me. I had begun to wonder about Barclay and things that he was telling me and the amount of stock he was selling. I bought stock from Mr. Barclay. On all purchases of stock that I made for my customers, the customers paid a commission, and I even did that when I was suspicious of Mr. Barclay's story to me, because Mr. Morgan was still telling me it was a good proposition. Barclay had built it up to such an extent that it was to be in the dollars a share class, but I believed Morgan in preference to Barclay. I bought some of the stock for myself and paid 3 cents a share for it in the fall of 1938, because I thought it was a good investment. (Tr. 183) Morgan and Barclay had convinced me because Union Associated Mines Company which prior to that time had only undeveloped mining claims, had purchased a 50 per cent gross interest in the well that was being drilled in the Torrance field in California, in exchange for 635,000 shares of stock. Mr. Barclay told me that the stock would be listed at 25 cents

(Testimony of Lyman L. Cromer)

a share, and he was president of the Exchange, and I knew when he told me that, that the stock would be listed there if he could put it in. And even though he offered me an option of 100,000 shares at 5 cents a share I would not buy them, but I believed the stock would open up on the Exchange at 25 cents a share when it was listed. I could buy all I wanted at the time for 3 cents a share, and [27] bought up to 200,000 shares, and bought 20,000 shares for myself, and 160,000 for customers. Mr. Snow had about 20,000 or 25,000 shares. So far as I know, none of the wires that I saw on the floor of the Exchange are untrue. I knew the well was drilled or was being drilled, and I also relied on the wire that said that the well had come in flowing. There was no wire that I saw that stated the well was flowing 1,000 barrels a day. I do not remember when it was that Morgan said the well produced between 200 and 250 barrels a day, but it was shortly after the well came in. I do not think I ever asked to get any of the money back, that I had paid for this stock, but I got some of it back because we were advised that if we sent certificates in that coincided with certain numbers the money we had paid, plus interest, would be returned to us. I think I sent back 5,000 shares and got back $150.00, plus 6 per cent interest. I did not turn in all of the stock I bought because there were lots of certificates that they would not take back. I brought down from Salt Lake certain papers that I was required to produce under the subpoena duces tecum (Tr. 189), but I do not have any buy orders. The 1,000 shares of Union Associated bought on January 11, 1939, for $24.50, shown on these records were bought from Havenor & Pett Brokerage Company, in Salt Lake. (Tr. 190) That

(Testimony of Lyman L. Cromer)

was after No. 1 well was drilled, and before No. 2 well was complete (Tr. 192), and based upon my experience as a broker I actually believed that the stock was worth every penny that was paid for it at the time. Defendants' Exhibit A for identification is a true record of our transactions in Union Associated Mining stock from November 1, 1938, until November 27, 1939, or at least a part of that record. November 9, 1938, I bought 2,500 shares, aggregating $45.00; on January 4, next, I bought 1,000 shares; and on January 9, it showed [28] 10,000 shares at 3 cents. (Tr. 199) On February 1, 1939, I owned 3,500 shares of Union Associated (Tr. 201), and on August 16, 1939, I bought 17,500 shares for $87.50, and on November 4, I purchased 12,000 shares for $60.00, that is one-half a cent a share. Mr. Snow sent in 10,000 shares of stock to the company and got $314.80 for them, that is 3 cents a share plus six per cent interest; this was in December, 1941. (Tr. 203)

Cross-Examination

By Mr. Cannon:

Most of the stocks on the Salt Lake Stock Exchange are what are called penny stocks (Tr. 205) and sell for less than a dollar a share. The conversation I had with Collins concerning a progressive sales contract was not in the presence of Morgan, but was in the presence of Dick Ray, Collins and myself. Snow came to Los Angeles for the purpose of looking over the Torrance Field after the well came in. Mr. Ray, Mr. Snow and Mr. Barclay came down after December 13 or 14, 1938, when the well came in. Barclay was at that time president of the Stock Exchange, and Snow, my partner, was then secretary of the Exchange. They did not come down in any official

(Testimony of Lyman L. Cromer)

capacity for the Exchange, as far as I know. Before Snow came down he told me he thought he ought to come down and find out how things were going. Mr. Ray was a partner of Mr. Truman's who has testified in this case, and who was at that time a director of Union Associated Mines. Before Snow came down to Los Angeles, we had been buying stock for our own account and also for the customer's; and after Snow came back we continued to buy stocks for our customers and for our own account. (Tr. 207) When Snow came back he told me he had gone over the Field and over the properties in the Los Angeles basin in which the company [29] was interested. During the whole of this time, both before and after Mr. Snow's visit to Los Angeles, I bought stock for Mr. Morgan's account, as Morgan's broker, and charged him and was paid a brokerage commission for so doing. I think I bought 15,000 or 20,000 shares for him and Morgan kept it. He bought it at the current market rate and was charged a regular commission. The stock was bought on the open market over the Salt Lake Stock Exchange. We would buy the stock from whomsoever had the stock available at a price that we were willing to pay for it. Morgan told me at no time to go in and support the market.

Re-Direct Examination

By Mr. Manster:

When Snow and Ray and Barclay came to Los Angeles in the early part of 1939, they did not bring with them any oil men to give them advice as to the nature of the field or what the wells were producing. (Tr. 210) The first 10,000 shares of stock I bought were bought the day Barclay told me the deal had been consummated; and I

(Testimony of Lyman L. Cromer)

paid him 3 cents a share for it; Snow took 5,000 and I took 5,000. Before I left Salt Lake to come here I asked Mr. Snow, and he told me he thought that we had traded in between 200,000 and 250,000 shares of stock between September, 1938, and December, 1939, (Tr. 213) and that we had bought about 25,000 shares of stock apiece. The range of this stock from September, 1938, through December, 1939, would be half of one cent low and three cents high, the half a cent low being in September, 1938, and the three cent high on October 14, 1938, and there was a decline on the stock from that date. (Tr. 213) The stock never came back to the price of 3 cents. As a broker, if a customer asked us to buy a certain stock, it is our duty to fill that order if we can. [30]

(At this point Plaintiff's Exhibit Nos. 10, 11 and 12, for identification, were withdrawn and returned to the witness. (Tr. 218-222)

Recross-Examination

By Mr. Manster:

I was never at any time an officer or director of Union Associated Mines Company.

Re-Cross Examination

By Mr. Cannon:

Barclay and Snow were the president and secretary, respectively, during the whole of the period mentioned, of the Salt Lake Stock Exchange; and Barclay was president of the Salt Lake Stock Exchange at the time of his death. They were, by reason of their services as president and secretary of the Salt Lake Stock Exchange, members of the listing committee which passes upon the propriety of an application for listing on the stock exchange. (Tr. 223)

(Witness excused.)

ARTHUR P. ADKISSON

recalled as a witness by and on behalf of the Government, having been previously duly sworn, testified as follows:

Direct Examination

(continued)

I got the $800.00 from A. A. Julian to purchase the stock covered in the contract between myself, Julian and Siens. (Tr. 233) Morgan delivered the 200,000 shares of stock to Mr. Siens.

Q. Do you know what Mr. Siens did with the stock?

Mr. Blue: I object to it on the ground it is calling for a conclusion of the witness, and also I object to all of this testimony as to any conversations or actions had by any [31] of the defendants or any of the named co-conspirators in the indictment.

* * * * * * * * *

* * * on the ground that it is inadmissible by reason of the fact that there is no res gestae here established and there is no evidence of a conspiracy at all. Until there is evidence of a conspiracy any statements made by one conspirator to a co-conspirator are inadmissible on the authorities I cited to your Honor. That will go, if the Court please, that objection, to all of Adkisson's testimony, so that in the event your ruling is adverse to my objection there will be no necessity of restating the objection.

The Court: Very well. Overruled.

Mr. Blue: Exception. (Tr. 233-234)

(Witness continuing)

Julian was subsequently reimbursed $1,500 for the $800.00 loan which took place on September 2. Siens

(Testimony of Arthur P. Adkisson)

wanted to get the stock out of Julian's hands as quickly as he could because he was afraid he would throw it on the market and hurt our market; so, he suggested that we talk to Gordon about it, which we did. Gordon suggested we get the money from Lacy. I went to see Lacy and told him I thought if we had sufficient time we could dispose of the stock and pay him back, and in the meantime we did not want the market hurt by this stock being thrown on it. So he said that if that was the case he would give me the money and he gave me a check for $1,500, payable as I recollect to A. A. Julian. I gave the check to Julian about two weeks after September 2, 1938. (Tr. 236) I made a trip to Salt Lake City about September 21, 1938. Siens had said he was anxious to get [32] a couple of men on the directorate of the Union Associated Mines Company, and the men he had picked out were Mr. Morgan to be secretary and Mr. Bray to be president, and they were going to hold a meeting in Salt Lake, and he wanted me to go over with Bray at that time. (Tr. 237) The purpose of having the meeting was to have these men appointed and to get the contract executed to the Plymouth Oil Company. I went to Salt Lake with Bray, and took with us the Plymouth Union contract, which had already been signed by the Plymouth officers, and we were going to Salt Lake to have the contract executed by the Union officers. A meeting of the board of directors of the Union Company was held about September, 1938, and Bray and Morgan were elected officers, president and secretary, respectively, of the Union. After the contract was made, I wanted to interest the brokers in the stock so we could realize some value on it and give it a market. Morgan introduced me to Barclay, president of the Salt Lake Stock Exchange,

(Testimony of Arthur P. Adkisson)

tc Mr. Donald Snow, and one or two others, including Hogle, and Havenor, Pett & Morris. (Tr. 240) We had conversations with Morgan and Barclay, relative to getting the brokers in Salt Lake City interested in the stock and suggested to Barclay that we would appreciate his help in the matter; he said he liked it and that he would help us in any way that he could by trying to get the brokers that he knew personally interested in the stock, and we tried to clean up the cheap stock that was on the market. Barclay suggested that a letter be sent to the stockholders requesting them not to sell their holdings in the Union Associated Mines, and also suggested we furnish him with all the good news that we could concerning developments in the company, progress of the well when it was started, and such leases that they might acquire. (Tr. 241) He said that we would clean up [33] the cheap stock, that is, put in a bid commencing at say 1 cent a share and raising the bids progressively as the stock was available; that is, the stock offered at that price was purchased. In starting a market operation, the first thing you have to do is acquire your stock at the cheapest price, lower than you expect to bid for it to begin with. You have that incentive of having a block of stock which you want to make valuable. Then when you get your stock you figure how much you are going to have to make as your opening bid, which in the case of Union Associated Mines, I believe, was 1 cent. We gave the orders to Barclay, and told him we would take all of the stock that was offered up to 25,000 shares, I believe, at 1 cent a share. Now, when a broker receives such an order he goes on the floor of the Exchange and he makes known to the other brokers that he is in the market or is willing to purchase at this

(Testimony of Arthur P. Adkisson)

price up to a certain amount of shares. If unsuccessful in acquiring all of the stock, he lets that bid stay in perhaps a day or two. If no other stock shows up or is offered, then he makes another bid, according to whatever instructions he receives from his principal. For instance, that he is willing to pay a cent and one-half for a named number of shares. Then he may raise the bid to, say, one and three-quarters cents. (Tr. 244) We placed progressively higher bids for the purpose of cleaning up the cheap Union stock. As I recall, the first bid we placed was for a cent; and then there wasn't any stock forthcoming, so in the course of a day or two, we raised the bid to a cent and one-half, at which time we acquired 10,000 shares. It was again raised to 2 cents, but so far as I know we never acquired any other stock; other than the 10,000 shares at 1½ cents. The highest our bid was ultimately raised [34] was to 2½ cents but during this period the highest price to which the stock was sold was for 3¾ cents. These bids were placed with Barclay by me on my own, Mr. Siens', Mr. Fischgrund's, and Mr. Dunigan's behalf. (Tr. 245) Over a period of approximately three months, from the last of September through the end of the year 1938, I placed about 10 bids at the outside, with Barclay; but those bids were not all executed. Only one was an executed transaction. The others were merely open, unconsummated bids. I knew that the letter of September 29, 1938 (Government Exhibit No. 2, in evidence) was being sent out to stockholders about that date. Barclay said the purpose of sending this letter was to keep the stockholders from selling their stock in the open market, and depressing the market. (Tr. 247) Barclay suggested that I furnish him publicity about the well as it progressed; and after the well was

(Testimony of Arthur P. Adkisson)

started, about the middle of November, we would send him telegrams and clippings from newspapers and financial journals of anything that had to do with the progress of the company or the well. I sent some of the telegrams myself.

(At this point, Plaintiff's Exhibit No. 9, a group of telegrams, was offered and received in evidence.)

(Witness continuing)

I sent these telegrams, and Barclay told me he was going to put them on the bulletin board on the floor of the Stock Exchange, because he wanted to keep up the interest of the brokers in the progress of the well, and to keep them interested in purchasing stock. My negotiations with Barclay with respect to the market activities took place before the well actually commenced drilling; but after the contract was [35] signed with Union Associated. (Tr. 250)

By Mr. Manster:

Q. In other words, these transactions that you had with Mr. Barclay with regard to the market started shortly after your arrival in Salt Lake, is that correct?

A. Yes, that is right.

Q. That is about September 21, is that correct?

A. That is correct.

Q. And continued previous to the commencement of drilling operations, is that right?

A. Yes, that is right." (Tr. 251) [35a]

Oil was first produced from Plymouth well No. 1 about the middle of December. About the latter part of October, 1938, the high on the stock was reached at about 3¾ cents. I made a third trip to Salt Lake in company

(Testimony of Arthur P. Adkisson)

with Mr. Bray, and saw Mr. Gordon, but had no specific conversation with him concerning the market in Union stock. It was sometime in October, I think. Gordon came through there and he just stopped one day, I believe, and I talked with him. I don't recall any specific conversation I had with him at the time. He did not come there for any particular purpose. I had conversation with Mr. Morgan. I believe Morgan was present at the first conversation I had with Barclay, and at that conversation the negotiations I have told about were discussed.

Gordon suggested that we borrow $1500.00 from Lacy, to repay Julian, and we wanted to repay Lacy for that money. Gordon told me that he had a nurse in New York when he was ill at one time, who had just come to the coast and she had asked him on several occasions if he knew of any place where she could make any money. He asked me if I would go to Santa Monica to meet her. I did. Her name was McLean and Gordon introduced me to her, and we talked a while, and Gordon said that he thought he had something that would appeal to her and something worth while, and it had to do with an oil well being drilled at Torrance, and that he thought she could make some money out of it if she would come in. He said she need not hesitate to come in because if she did come in, he would guarantee her against loss. She said she wanted to think it over, and wanted to talk to some of the other girls that might be interesting in taking a chance; and that she would let him know. Gordon said that his guarantee would extend so far as the others were concerned as well. Within the next two or three days,

(Testimony of Arthur P. Adkisson)

Gordon called me and told me he had [36] heard from Miss McLane, and they were going to put $1500.00 into the deal, and asked me to go out and handle the transaction, which I did. I got a check for $1500.00 payable to the Plymouth Oil Company, and I wrote out a guarantee in longhand and one of the women copied it on a typeyriter on notepaper, and I signed Gordon's name by me, guaranteeing them against loss in the purchase of the stock of the Union Associated. (Tr. 257) I believe the other woman who bought stock was Miss Klinger. She is the only one whose name I recall. (Tr. 257) The check of $1500.00 was for 40,000 shares, which would be 3¾ cents a share. I gave the $1500.00 check to Mr. Siens of the Plymouth Oil Company and Siens said he was going to send the check right down to Lacy so we can keep our credit good. I do not know whether the check was sent to Lacy, although Siens told me he was going to send it to him to reimburse Lacy for the $1500.00 which he had advanced on behalf of Plymouth to A. A. Julian. Some time later, these women made a demand for the return of their money upon giving back the stock to Gordon, which he had sold them. He told me he had paid the women back in return for the stock. (Tr. 262) To my knowledge, Mr. Gordon was not present on any of the occasions when the contract was drawn (Tr. 263) and I do not recall that he was consulted personally or over the telephone in reference to the terms of that contract. After the peak of the stock was reached, of 3¾ cents, there wasn't any market in the stock. None of the bids that we placed had been fulfilled. I do not remember when the bids were withdrawn but we were not active in the market. [37]

(Testimony of Arthur P. Adkisson)

Q. By Mr. Manster: You had placed, you said, approximately ten bids, is that right?

A. Yes, that is right.

Q. And those bids were placed at progressively higher prices, is that right? A. That is right. (Tr. 264)

As far as I know there was not any trading in the stock. I conducted correspondence with Mr. Barclay, I being in Los Angeles and Barclay being in Salt Lake, and discussed the market with him. In the latter part of December, after [37a] the well came in, I decided that there was not any market for the stock, and Siens was disappointed in the action of the stock, and he couldn't sell any. I told him that I had done all that I could, as far as a broker was concerned, I had performed to the best of my ability, and there just wasn't anything more I could do, so I thought I better withdraw. (Tr. 266) The price went down from 3¾ cents. Some stock was offered at 2 cents but it was not sold, and I withdrew from the venture early in January or late in December. I have been to the Plymouth offices frequently in the fall of 1938, and up to the early part of January, 1939. Those offices were in the Foreman Building in Los Angeles. Siens was in there at first and subsequently Davis came in. Fischgrund had an office in an adjoining suite with a connecting door, and in a way I had office space there. Gordon's office was in the Subway Terminal Building. I never saw Gordon at the Plymouth office in the Foreman Building. Schirm I think was in Gordon's office and rented space from Gordon, I believe. I do not know whether or not Davis was employed by Gordon, although he was in the office with Gordon. Subsequently, I met Collins in the Plymouth office. Collins had for-

(Testimony of Arthur P. Adkisson)

merly been in the same investment firm that I was with, and I was quite surprised to see him at the Plymouth office. I had no idea that he knew Siens or anyone else connected with the Plymouth Company. One day I was sitting in the reception room of Mr. Dunnigan's office, and Mr. Collins came in with a fellow by the name of Joe Murphy and Mr. Siens. I asked Collins what he was doing there and he said he had just made a deal with Siens to take over this Union Associated stock. He told me he was drawing down big amounts of it and told me that they had put in some new property, and asked me if I knew about the Devil's Den property. I told him I did not. He told me they had put it in for [38] several hundred thousand shares. When I asked him what he thought about it, he said he did not know, but did not think very highly of it; that is, of the Devil's Den lease. These conversations were with Collins about the first of the year 1939, after I had withdrawn from the venture. 635,000 shares of stock were issued to Schirm in connection with the Plymouth Union contract. (Tr. 271) I do not know whether Schirm endorsed all of the certificates for 635,000 shares, but I know he endorsed some of them. I do remember some telephone conversations between Siens and Gordon in regard to material for the well, pipe, etc. This was during the drilling of the well, and I particularly remember one long distance telephone conversation with regard to casing for the well. This would be around the first of December, sometime after they started the drilling of the well. Siens put the call through the Plymouth office to Gordon. We had to have pipe, and I was there when Siens put the call through. There were other conversations at which I was present

(Testimony of Arthur P. Adkisson)

but I do not recall anything specific, but they were in connection with the drilling operations. I do not think I put through any long distance calls to Mr. Gordon. I paid my own expenses on the three trips that I made to Salt Lake. I only got $100.00 from Siens at one time but that did not cover all of my expenditures. I was supposed to receive some stock. Siens was to give me 25,000 shares, and then he did not want to do it. So, I told him that I owed Mr. Gordon some money, some stock, and so he got Mr. Gordon on the phone and asked Mr. Gordon if he would accept a cancellation of my debt for that stock, and Mr. Gordon said that he would. So, in consideration of not taking any Union stock my obligation to Gordon was cancelled. I do not recall William Millener. I met McEvoy in the Plymouth office, but I [39] do not think he was with Collins at the time. I know Christian Vrang (Tr. 276) who had office space in Mr. Gordon's office. I am familiar with the signatures of Gordon, Fischgrund, Siens, Barclay, Morgan, Schirm and Vrang.

(At this point, a draft on the California Bank of Los Angeles for $800.00, bearing the signature of A. P. Adkisson, that was sent to the Walker Bank in Salt Lake in exchange for the 200,000 shares of Union Associated stock was offered and received in evidence. as Exhibit No. 13.)

Mr. Blue: If the Court please, all this, of course, is subject to the objection I made as to the incompetency of this type of evidence until the res gestae is established, and with that understanding, of course—

The Court: All right. (Tr. 279)

(Witness continuing)

(Testimony of Arthur P. Adkisson)

I had conversations with both Morgan and Barclay with reference to the re-listing of the Union stock on the Salt Lake Stock Exchange, the first conversation being with Mr. Barclay, aproximately the first time I talked to him about the stock. We thought that the thing to do would be to have the stock re-listed on the Stock Exchange. Then I talked to Morgan about it. He was secretary of the company and it would be up to him to prepare the papers for the Securities and Exchange Commission and the Salt Lake Stock Exchange. Listed stocks have a great advantage over unlisted stocks in the market because your sales are reflected on the board every day. they are on the tape; whereas, in unlisted stock it is a matter of having to go around and contact several brokers or one broker who has become identified with this [40] stock as a specialist in it. A listed stock attracts more attention. I know that I am named as a conspirator in this indictment. (Tr. 280)

Cross-Examination

By Mr. Cannon:

I never did conspire to defraud anyone. The way they handle a listed stock in the normal course of business operations is that the stock is offered for sale, and it is called on the board, and the man in charge of the particular stock exchange calls the stock and asks for a bid or offer. The man who calls for the bid is an employee of the stock exchange. (Tr. 282) On listed stocks the transactions are quoted in the papers each day; and on unlisted stocks the transactions take place on the floor of the exchange, but they do not carry them on the board in the exchange room. And an "over-the-counter" market is one where stocks are not listed, they are just traded

(Testimony of Arthur P. Adkisson)

in offices or any other place. A number of Bank stocks are unlisted and are traded in "over-the-counter" market. All fire insurance companies are unlisted, as well as many utilities stocks. When I talked with Mr. Barclay I thought it would be a good idea to re-list the stock on the exchange, knowing that it had formerly been listed on the Salt Lake Exchange. I discussed the matter with Morgan and talked with him concerning the preparation of the application to list. In the normal operations of listing a stock, an application is made to the Listing Committee or to the Board of Governors of the stock exchange and after they have passed upon it, the stock is then approved by the stock exchange, and as a matter of practice they must then file that information with the Securities Exchange Commission of the United States. And after it goes to the Securities [41] Exchange Commission on the form which they provide, the stock is then held up for trading on it as a listed stock until the Securities Exchange Commission has an examination made of the prospectus or the application to list. (Tr. 285) In connection with this Union Associated stock, we offered to buy up to 25,000 shares at 1 cent a share. I gave that order to Barclay. We did not buy any stock at 1 cent a share, but in a few days we raised the bid to 1½ cents, which was done for the purpose of inducing loose stock to come in. We bought 10,000 shares at 1½ cents. Then we raised the bid again and tried to get the stock at a higher bid. I did not offer any of my own stock for sale on the market at 1½ cents, or at any other higher price. In October, before the well was completed, the stock reached a peak of 3¾ cents; but this was after the contract had been made for the drilling of Well No. 1, which contract gave to Union Associated a 50 per cent interest

(Testimony of Arthur P. Adkisson)

of the gross production of the well to be drilled, for which Union Associated was only giving stock. I left the bid at 1½ cents stand for a while, and thereafter raised the bid to 2 cents, but did not acquire any stock at that price as none was offered, although our bid was standing at 2 cents. And I did not feed any of my own stock into that market either. (Tr. 288) At no time did I conduct any wash sales over the board or over the counter. No wash sales or transactions were carried out in this stock that I was handling. Under the rules of the Securities and Exchange Commission, I understand, any person owning 10 per cent of stock in a company that does any trading it it must report the trade. I placed approximately 10 bids with Mr. Barclay between the middle of September and the first of 1939, I guess, but only one of those 10 bids was consummated, and the rest were never carried out because no stock was offered at [42] that time. In connection with the 200,000 shares of Union Associated stocks that we have discussed, I paid $800.00 into the California Bank, and sent it to Salt Lake with instructions to pay it over to Mr. Morgan, or to his order, when he delivered to the Bank there in Salt Lake approximately 200,000 shares of stock. I obtained this $800.00 from Mr. Julian and he took a lien on that stock and insisted upon having that lien until he got back $1500.00, or a $700.00 profit on the transaction. A few weeks later he became restive about his money, and wanted his money out of it. So, I went to Mr. Lacy and told him about the transaction and asked him to let me have $1500.00 to pay Julian. Later, to get the money to pay back Mr. Lacy, I had the transaction with Miss McLean and the other persons, and received a $1500.00 check pay-

(Testimony of Arthur P. Adkisson)

able to the Plymouth Oil Company, but I did not deliver that specific check to Mr. Lacy, but delivered it to Mr. Siens. What he did with it I do not know. Only he told me he was going to pay Lacy with it. I met Mr. Collins in the Plymouth office just about the time I was leaving the deal, and the talk I had with Collins about the Devil's Den property was not held the first time I met him in the Plymouth office. It was some time later that I had that conversation with him. He did not think very much of that particular lease then. I do not know whether or not that was after he had filed a civil suit against the Plymouth Oil Company.

Cross-Examination

By Mr. Blue:

At the time Collins told me about the Devil's Den lease, he also told me about the Torrance deals, and that he believed the Union Associated Mines Company had made a wonderful deal; he was quite enthusiastic about it, and I myself [43] thought it was a good deal, because it was a most unusual deal. The company was offered for 635,000 shares of its stock an interest in a well that was to be drilled in a proven territory, and assuming that they got a well without any overhead at all, 50 percent interest in that well with a settled production of 200 barrels, the way they used to figure these things, it would be worth about $1,000.00 a barrel for settled production. In other words, if they had a 100 barrel well with settled production, the price fixed on the well would be $100,000.00. In the meantime, they had not taken any of the old assets of the company, and I knew that the stock was listed on the Salt Lake Exchange at 20 to 25 cents a share, and I knew that the company had put back into its properties

(Testimony of Arthur P. Adkisson)

$200,000.00 or $300,000.00, and that the stock had died a natural death with the death of the president of that company who owned a controlling interest. (Tr. 298)

Before engaging in the securities business, I was in the banking business connected with the Merchants National Bank in Los Angeles as a vice-president. I have lived in Los Angeles 30 years, and have known Mr. Gordon 15 to 20 years, and during that time his reputation as to truth, honesty and integrity has been the very best. The typewritten note signed "Fred V. Gordon by A. D. Adkisson," dated October 24, 1938, was signed "Fred V. Gordon by A. D. Adkisson" by myself on that date. I delivered that document to Grace T. Walker at the time I received a $1500.00 check (the document referred to was marked Defendants' Exhibit B, and received in evidence.) None of the statements in Plaintiff's Exhibit 9, telegrams or wires, that were sent to Mr. Barclay are untrue.

Mr. Blue: I am going to read these wires to the jury:

"Los Angeles, California, November 12. [44]
"J. A. Barclay.

"Started drilling Union Associated well yesterday, 384 feet deep this morning. Will keep you posted. Regards.

"A. P. Adkinson."

The next wire is dated November 16, 1938:

"J. A. Barclay,
"New House Building, Salt Lake City, Utah.

"Union Associated well 2209 feet eight o'clock this morning. Regards.

"A. P. Adkisson."

(Testimony of Arthur P. Adkisson)

The next wire is dated November 25, 1938:

"J. A. Barclay,

"New House Building, Salt Lake City, Utah.

"Pleast cancel my order to sell stop Drilling ahead at 4265 feet stop Will be well into sand by Monday.

"A. P. Adkisson."

The next wire is dated November 30, 1938:

"J. A. Barclay,

"New House Building,

"Salt Lake City, Utah.

"Taking last core at 5135 today. Will then run formation tester then set pipe and cement. All this work will be completed in next twenty-four hours. Everything working perfectly. Regards.

"A. P. Adkisson."

The next wire is dated November 29.

* * * * * * * * *

"J. H. Barclay,

"New House Building, [45]

"Salt Lake City, Utah.

"Just came from the well. It is drilling below 5000 feet in the oil sand. Plenty of oil showing in the ditch and it only a question of hours until the Union Associated will have a producers. Regards.

"A. P. Adkisson."

(Testimony of Arthur P. Adkisson)

The next wire is dated December 1:

"J. A. Barclay,
"New House Building,
"Salt Lake City, Utah.

"Took last core last night. Shows excellent sand. Ran formation tester. Picture perfect. Running casing now. Will be landed in three or four hours.

"A. P. Adkisson."

Now, here is a wire that is dated November 18, 1938:

"J. A. Barclay,
"New House Building,
"Salt Lake City, Utah.

"Three thousand two feet in Union Associated well eight o'clock this morning. Drilling ahead. Regards.

"A. P. Adkisson."

Incidentally, these telegrams will have to be re-assorted. I will read the last wire here, which is dated December 30, 1938:

"J. A. Barclay,
"New House Building,
"Salt Lake City, Utah.

"Could not make delivery at your price. Morgans returns tonight. Deal all complete. [46] Derrick erected for second well. No sales coming from our people here. Regards.

"A. P. Adkisson." (Tr. 301-304)

(Testimony of Arthur P. Adkisson)

(Witness continuing)

Barclay had said that there had been some sales on the Salt Lake Stock Exchange coming from Los Angeles and I tried to find out if anybody in Los Angeles was connected with the selling of that stock, but I wasn't able to find anyone. I at no time charged any commission or any compensation for any transactions that I made in connection with these deals. All I got out of the deal was the $100.00 that was paid to me for expenses of one trip to Salt Lake, and the shares of stock, amounting to 20,000 shares, which were supposed to be coming to me, and they were given to Mr. Gordon to extinguish an obligation that I was owing him. I owed Gordon some stock in connection with a brokerage transaction, to the extent of about $750.00. This 20,000 shares that Gordon agreed to accept was in extinguishment of that $750.00 obligation. During this time there were wells surrounding Well No. 1. (Tr. 306) Prior to the time that I entered this transaction, I had made an investigation of the Torrance Field, and saw that there was considerable drilling activity in the field, particularly at that end where the Plymouth lease was. I read some geological reports on the Torrance Field, one of them by Mr. Vrang and another by a man named Soyster. (Tr. 309) I know a man by the name of Schirm, and remember having a conversation with him in reference to his refusal to endorse a stock certificate. This was the latter part of December, 1938, in the office of the Plymouth Oil Company in Los Angeles [47] and Schirm was asked to endorse the certificates of Union Associated Mines Company that stood in Schirm's name. Siens asked him to do it, and he said he would not, and when I asked him why, he said that

(Testimony of Arthur P. Adkisson)

Siens had promised him some stock, and when he asked Siens for it the other day, that he would not give it to him. For that reason he had refused to endorse the stock. Then I asked him if he would endorse it as a personal favor to me, and he said he would, and he did. At that time he told me he was through with the deal, and I never saw him again in connection with the deal. (Tr. 311) Siens told me that Schirm was no longer connected in any way with the deal. That was in December, 1938, and I do not remember seeing Schirm around the office after that time. I got information that Plymouth Well No. 1 came in as a producer, and I told that to certain people who were interested in the stock. I was told by someone that they estimated that the initial production was between 300 and 500 barrels. Siens told me that. Fischgrund did not; neither did Gordon. No one told me that except Siens, who is now dead. I am licensed under the Securities and Exchange Commission, or rather, under the State of California Corporation Commissioner. I went up to the Securities Commission of the State of Utah in September, 1938, when I went to Salt Lake City with letters of introduction from three of the local banks here to Mr. Gull, who was Corporation Commissioner of Utah and situated in Salt Lake City. I talked with Mr. Gull about the Union Associated Plymouth deal. Before going to Salt Lake, I had been out to the Torrance Field, but I do not remember just when, and I saw derricks there in the location of Plymouth Well No. 1 and surrounding that location, and I read newspaper articles published in the financial sheet of the Los Angeles newspapers [48] as to the progress made in the drilling at the Torrance Field. These newspaper clippings were shown to me

(Testimony of Arthur P. Adkisson)

while I was in the Plymouth office, regarding the Plymouth and other wells. I placed bids for the purchase of Union stock for myself, Siens, Fischgrund and Dunnigan. (Tr. 318) These orders that I speak of were placed as coming from Fischgrund and Dunnigan through Siens. After I took these orders from Siens I talked to Dunnigan about it, but I do not recall specifically that I talked to Fischgrund about it. I do not recall the exact conversation I had with Miss McLean and the other women when I went out to see them, except that Gordon recalled to her mind that she had asked him on different occasions to look for something for her that she could make some money in. He said, "I think I have something that will be of interest to you, and I would like to see you come in," or words to that effect, and "if you do come in I will guarantee you against lost." Then we went away. She did not give us any money, and he did not ask for any that day. He told her to think about it and let him know. Then afterwards, I went out there and got the $1500.00 check. Gordon was not with me at the time, but he authorized me to sign his name by myself. I have been told that these women got back their $1500.00. [49]

Mr. Morris: At this time I would like to move the association or substitution as attorneys for Mr. Collins of Mr. David Cannon and myself, Thomas Morris, as attorneys for Mr. Collins in place of Mr. Morris alone.

The Court: Very well. (Tr. 324)

ARTHUR P. ADKISSON,

a witness called by and on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

(continued)

By Mr. Blue:

I first became interested in the sale and distribution of Union Associated Mines stock in August of 1938, and continued my association in that capacity until the latter part of December of 1938, at which time I severed my connection with the deal. Rigging a market involves a lot of things. We placed bids in there at progressive prices but there was only one purchase made during the entire time and that was of 10,000 shares at one and one-half cents, and I paid a commission on that sale to Mr. Barclay the broker from whom we bought it. A rigged market is one where one person, or a group of persons who join together in a scheme to raise the price of stock and by purchases and sales between themselves establish a fictitious market; but there were no purchases and sales between ourselves in this stock. Based upon my definition of a rigged market, there were no purchases or sales between ourselves other than the 10,000 shares, but that did not, according to my definition, constitute a rigged market. I have heard from whom Mr. Barclay bought those 10,000 shares, and while I [50] did not know personally from whom Barclay bought it, it was my understanding that he bought it from Mr. Morgan's brother-in-law, but I did not tell him, the brother-in-law, to sell.

(Testimony of Arthur P. Adkisson)

Mr. Blue: All right. Now, if the Court please, yesterday I asked this witness a question as to whether or not he had received information from a certain geologist or geologists, known as Vrang and Soyster, in reference to the Torrance Field before he became actually interested. That question was objected to on the ground that it called for hearsay and the objection was sustained. * * * I offer to prove, if the Court please, that if this witness would be permitted to testify and answer the questions that I would propound to him in reference to the geology and the reports that he had received on the Torrance Field, * * * that I would prove that two competent geologists, one Christian Vrang, V-r-a-n-g, and one M. H. Soyster, S-o-y-s-t-e-r, had written reports which came to the attention of this witness, who is charged as a co-conspirator in this particular case, wherein in these written reports it was stated that certain locations * * * in the Torrance Field, which were subsequently drilled upon by the Plymouth Oil Company, were sure-shot locations for production and that wells drilled on these locations would produce in excess of 500 barrels a day; also that in the Torrance Field there were scores of wells drilling and scores of wells had been brought into production, and based on the production that was obtained in the Torrance Field from these wells that had been drilled just a few months prior to and during this time, that this witness receiving those reports relied on those reports, and that he would so testify. (Tr. 327-328-329) [51]

(Testimony of Arthur P. Adkisson)

The Court: * * * Objection sustained. The jury will disregard the argument of counsel.

Mr. Blue: I will note an exception, if the Court please. (Tr. 332)

Re-Direct Examination

By Mr. Manster:

Briefly stated, my explanation is that a rigged market is an artificial market, one that is not formed by the natural laws of supply and demand. (Tr. 333) Mr. Barclay and I had placed bids in Salt Lake over the counter market in respect to the Union Associated Mines Company stock. My connection with the Plymouth group was to dispose of the stock of the Union Associated Mines Company. I received instructions from Mr. Siens, but I do not believe I received instructions from anyone else connected with the Plymouth Company, either Gordon, Davis or Fischgrund, as to placing bids with a broker. I placed bids with Barclay at progressively rising prices, and by placing progressively higher bids that affects the market so as to cause it to rise; and by raising the market price in that fashion I would say that that was rigging the market, but there was only one purchase made at that time of 10,000 shares at 1½ cents, which purchase was made on September 27, 1938, or thereabouts. There was another sale made on the next day of that same 10,000 shares at 3 cents, so there was a 1½ cent profit over one day in that transaction. It is the usual custom in the brokerage business to be supplied with funds when you place a bid. You trust your client, and if he places the

(Testimony of Arthur P. Adkisson)

bid with you, you either know his ability to carry it through and put it in, or else you don't accept it. I received funds from Siens with which to pay [52] for the 10,000 shares that was purchased. There were no other orders ever executed, because there wasn't any stock offered at those prices. It was the purpose to prevent sales of stock at this time so as not to depress the market. Barclay made numerous complaints to me about sales in this stock, selling orders in this stock from Los Angeles which depressed the Salt Lake market, and that in my opinion was one of the reasons why this stock did not rise acording to expectations. I received some information that Well No. 1 came in between 300 and 500 barrels, getting this information from Siens. Davis was keeping the books of the Plymouth Company, and was the responsible officer in that company to keep production records. You do not get the production records until the end of a run. You do not get them at the time the well came in; at least, he did not have them. I never did see any record to the effect that 300 to 500 barrels was received as the initial production; and I never was down at the drilling site at the time to check on that. I never did actually find out what the well came in for at the time, and I do not know that I ever repeated any statement to anybody about the production, but kept it to myself. I had heard later that after the women who purchased the 40,000 shares of stock in which Gordon and I participated, bought some other stock in Union Associated Mines from Mr. McEvoy.

(Testimony of Arthur P. Adkisson)

Re-Cross Examination

By Mr. Cannon:

I placed this order with Barclay and bought 10,000 shares at 1½ cents. I haven't any idea who it was sold to. (Tr. 343) [53]

Re-Cross Examination

By Mr. Blue:

That was a free market in Salt Lake on this stock, for the reason that there evidently were sales going on, much to Mr. Barclay's distress, and they were apparently coming from Los Angeles, but as far as I know it was none of the stock that was in the Plymouth Oil group.

(Witness excused.) (Tr. 346)

Mr. Manster: At this point we have a number of letters to introduce. (Handing) (Tr. 346)

* * * * * * * * *

Mr. Evans: As I understand it, your Honor, the status of it now is that it is stipulated on behalf of all defendants as to the signatures, the dates, the receipt, and so on of the letters, and that there is no objection to the letters, which will be marked Exhibit 14, being in evidence at this time, subject only to a later motion to strike certain of the letters if their materiality is not shown in the scheme or the case. Is that correct?

Mr. Cannon: His understanding is correct.

The Court: All right. Let us mark the letters in evidence so we won't have to go through all this again.

The Clerk: Plaintiff's 14.

(The documents referred to were marked Plaintiff's Exhibit No. 14, and received in evidence.) (Tr. 348-349)

JOHN W. ORTON,

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows: [54]

Direct Examination

By Mr. Evans:

My name is John W. Orton and I live in Salt Lake City, and I am in the business of public accounting. I produced a large box of records which are now in the court room, and brought them down from Salt Lake City, in connection with a subpoena duces tecum. (Tr. 352) Those books and records consist of general cash, general journal, and general ledger and the stock records. I received these books and records in the summer of 1938.

Cross-Examination

By Mr. Cannon:

I kept those books and records from 1938, in the summer, when I received them. They are all that I know of, and are correctly kept.

Mr. Cannon: As far as the defendants are concerned, and the documents, no further foundation need be laid for their introduction into evidence, but each of the defendants reserves the right to strike, to make a motion to strike them, in the event they are not connected up with the defendants.

Mr. Blue: And in addition thereto, to which we agree in every respect with what Mr. Cannon has stipulated, we also specifically want to have it understood that we have the right to strike any and all entries prior to or subsequent to the dates set forth in the indictment.

Mr. Cannon: That is right.

(Testimony of John W. Orton)

The Court: All right. (Tr. 354)

(At this time, the books and records were referred to as Government Exhibit 19.)

(Witness Orton temporarily excused.) [55]

WERNER J. WAPPLER,

called as a witness by and on behalf of the Plaintiff, having been first duly sworn and examined, testified as follows:

Direct Examination

By Mr. Evans:

My name is Werner J. Wappler and I live in Denver, Colorado, and I am at the present time District Investigation Chief of the War Production Board, and was formerly employed by the Securities and Exchange Commission by whom I was employed for seven and one-half years. I was so employed in 1938 and 1939, and was an accountant-investigator. I have never practiced public accounting, but I majored in accounting and received a college degree from Ellsworth Collage, Iowa Falls, Iowa. After graduation I engaged in manufacturing accounting first, and then for ten years was engaged in the business of brokerage accounting. As an employee of the Securities and Exchange Commission, I conferred with defendant Morgan in Salt Lake City, in February, 1939, in June, 1939, in September, 1939, and once in 1940.

Mr. Evans: Your Honor, we have marked two additional batches of letters as Exhibit 15 for identification and Exhibit 16 for identification. Those are the letters

(Testimony of Werner J. Wappler)

to which we previous referred, which will be examined by counsel at a recess.

(The documents referred to were marked Plaintiff's Exhibit 15, for identification.)

(The documents referred to were marked Plaintiff's Exhibit 16, for identification.) (Tr. 358)

(Witness continuing)

In my conferences with Morgan in June, 1939, at which I was accompanied by Mr. Geraghty, Morgan delivered [56] to us certain original letters and copies from his, Morgan's, correspondence files. The documents embraced in Exhibit 14 and Exhibit 15 were letters and documents delivered to us by Morgan in June, 1939. The documents embraced in Exhibit 16 for identification were received from J. H. Barclay in his office in the New House Building in Salt Lake City, and delivered by Barclay to Geraghty and me. In addition to the letters contained in Exhibits 14, 15 and 16, there were certain additional letters turned over to us by Morgan.

(Some documents were marked Plaintiff's Exhibit 17, for identification.)

(Witness continuing)

Government's Exhibit 17, for identification, were prepared from the stock certificate books of Union Associated Mines Company and the stock record book, and also the stock register book of that corporation, and a certain portion thereof, of those schedules, were prepared in September of 1939; and the rest of them were prepared yesterday. In preparing them yesterday, I referred to certain of the books of Union Associated Mines which

(Testimony of Werner J. Wappler)

now appear on the counsel table. In September, 1938, Union Associated issued stock in the amount of 635,000 shares in exchange for an interest in Plymouth Well No. 1. This was covered by Certificate No. 3191 on September 21, 1938. (Tr. 363) It was issued in the name of Chris Schirm. The certificate was later returned and thereafter reissued into smaller denominations, on September 27 and September 28, 1938, and totaled 635,000 shares. These were all issued again in the name of Chris Schirm. On February 25, 1939, Certificate No. 4247 was issued for 635,000 shares of Union Associated Mines stock in the name of Plymouth Oil Company for the interest in Plymouth Well No. 2. This certificate was never reissued; [57] it was left in that denomination. On February 25, 1939, Certificate No. 4248 was issued for 235,000 shares in the name of William S. Millener (Tr. 365); and on March 6, 1939, this certificate was broken into several smaller certificates, as follows: 25,000 shares were issued on March 6, in the name of Dunnigan Estates, Incorporated; 174,134 shares were issued in the name of R. A. Dunnigan, on March 6th. There were several certificates totalling 174,000 and on March 6th one certificate for 35,866 shares was issued in the name of A. A. Julian, making a total of 235,000 shares. The 25,000 share certificate issued to Dunnigan Estates was thereafter issued or distributed into the names of two other individuals, as follows: 20,000 shares in two certificates of 10,000 shares each, in the name of Lucretia J. Dean, on August 5, 1939; the remaining 5,000 was split up into five 1,000 share certificates issued in the name of W. F. Gardner on August 8, 1939. The 174,134 shares, issued in the name of R. A. Dunnigan,

(Testimony of Werner J. Wappler)

were retransferred in part, 113,000 shares into the names of other people, 61,000 shares was left in the name of R. A. Dunnigan. The other 35,866 shares, which made up the total of 235,000 shares were issued in the name of A. A. Julian, but none of that has been re-transferred. On August 23, 1939, only 499,000 shares of that certificate first issued for 635,000 shares had been transferred, and that 499,000 shares was held by 42 different individuals; and the remainder, or 136,000 shares was held in the name of Christopher Schirm, as of August 23, 1939. (Tr. 368) In September, 1938, 200,033 shares of stock were issued in exchange for $800.00, the stock being delivered by John Morgan. The records reflect that certain certificates were issued against that stock as follows: Up to August 23, 1939, 10 certificates had been issued to [58] other individuals, totalling 98,000 shares. That is, I mean in 10 different names. There may have been more certificates. The difference between 98,000 and the 200,000 plus remained in the name of A. A. Julian, and totaled 102,033 shares. (Tr. 370) Prior to the issuance of the original 635,000 shares, in the name of Christopher Schirm, there was no stock of Union Associated Mines Company on the books appearing in his name. The records show that Mrs. Erline Bates (Tr. 371) had issued to her 17,000 shares in 1,000 share certificates, dated January 24, 1939. On March 7, 1939, a total of 15,000 shares in 1,000 share certificates were issued to Miss Grace T. Walker; and on March 22, 1939, one certificate of 26,667 shares was also issued in the name

(Testimony of Werner J. Wappler)

of Miss Grace T. Walker, making a total of 41,667 shares to her. On March 22, 1939, one certificate for 5,333 shares was issued in the name of Bessie G. McLean; and on March 9, 1939, 100 shares was issued to Katherine C. Davis; and on March 22, 1939, one certificate for 4,000 shares was issued in the name of Katherine C. Davis, making a total issued to her of 5,000 shares. On February 8, 1939, a certificate for 2,500 shares was issued in the name of Matilda M. Klinger; and also on the same date a certificate for 500 shares was issued to her; and on March 22, 1939, one certificate for 4,000 shares was issued in her name, making a total of 7,000 shares. On April 25, 1939, one certificate for 1,000 shares was issued in the name of Miss Ida M. Apperson. On May 8, 1939, one certificate for 1,000 shares was issued in the name of Lewis J. Hampton. On January 23, 1939, five 1,000 share certificates were issued in the name of Ila Mae Hutchason. On August 11, 1939, five 1,000 share certificates were issued in the name of R. W. Peet. On February 25, 1939, one certificate in the name of Frank L. Tucker, for 5,000 shares. [59]

(A document was marked Government's Exhibit No. 18, for identification.)

(Witness continuing)

A document consisting of a detail of receipts and disbursements and also a summary of receipts and disbursements of the Union Associated Mines Company for the period September 6, 1938, to October 16, 1940, was received by me from Mr. Morgan, who voluntarily gave it to me in October, 1940.

(Testimony of Werner J. Wappler)

Cross-Examination

By Mr. Cannon:

I talked to Morgan a number of times and asked for his books and records and correspondence files in the case, whatever he had, and he gave me everything without any quibbling at all. He made the delivery voluntarily without any threat from me as to an indictment.

(The documents heretofore referred to and marked Government's Exhibit 18 for identification, were offered and received in evidence.)

(Witness excused.)

JOHN W. ORTON,

recalled as a witness by and on behalf of the Government, having been previously duly sworn, testified as follows:

Direct Examination

(continued.)

By Mr. Evans:

I recall in the fall of 1938, or early in 1939, I worked upon a registration statement in behalf of Union Associated Mines Company for the listing of stock upon the Salt Lake Stock Exchange. I was employed to do the work by Mr. Barclay. This was probably early fall of 1938. I was [60] referred to Morgan's office for the information, and I obtained the information from the books and records. The books of the company were in the possession of the secretary, Zell Truman. (Tr. 382)

Mr. Cannon: We have no objection to offering the document in evidence that counsel now has in his hand, being number 7 for identification, that is, that portion that

(Testimony of John W. Orton)

relates to any transactions occurring within the period of the indictment. This covers everything from the company's inception, but the only part which I think is material, and which I stipulate to allowing it to go into evidence as far as the defendants are concernel, has relation to the matters transpiring after June 4, 1938.

Mr. Blue: There is only one objection I would have on behalf of the defendants Schirm, Gordon and Fischgrund, and that is that it is hearsay as to them, as there is no foundation laid as to the fact that this ever at any time came to their attention. But outside of that I have no objection.

Mr. Morris: The same objection on the part of defendant Collins.

The Court: All right. Overruled.

Mr. Cannon: Exception. (Tr. 383)

Mr. Evans: * * * However, we are offering at this time the portion of this registration statement as contained in the filing made January 31, 1939, following the printed form 10 and made a part thereof.

Mr. Cannon: There is no objection to that. Everything in that file that was received on January 31, 1939, or thereafter we have no objection to, except the ones that have heretofore been noted by other counsel.

Mr. Evans: And made a part even though they might be of [61] an earlier date? Where it is referred to in this filing we insist on their being together.

Mr. Cannon: If they copied something in that from the previous filing and filed something which they copied which was a part of the exhibit filed in January, 1939. we haven't the slightest objection.

Mr. Evans: Very well.

(Testimony of John W. Orton)

Mr. Cannon: Other than the ones counsel have reserved to themselves.

* * * * * * * * *

(The document heretofore marked as Plaintiff's Exhibit No. 7, for identification, was received in evidence.) (Tr. 384-385)

(Witness continuing)

As of December 31, 1937, Union Associated Mines had outstanding 789,229 shares, and immediately prior to the issuance of this first 635,000 shares that was given for the interest in Plymouth Well No. 1, there was 1,424,299 shares outstanding, immediately following the addition of the 635,000 shares. After the second block of 635,000 shares was issued, in exchange for Plymouth Well No. 2, there were outstanding 2,059,229 shares (Tr. 387), and after the issuance of the 235,000 shares on February 27, 1939, to Mr. Millener there were outstanding 2,294,229 shares. I prepared the list of stockholders of record as of August 23, 1939, with the understanding that it was to be used for the purpose of paying a dividend, and delivered that compilation to the Union Company. Government's Exhibit No. 20 appears to be the dividend list of stockholders as of that date, which I prepared. That total appearing on Exhibit 20 is 2,298,-299 shares. The correct total amount of Union stock [62] outstanding as of August 23, 1939, was 2,298,229 shares, and the company was incorporated with an authorized capitalization of 3,000,000 shares; therefore, there would be 701,771 shares remaining in the treasury. (Tr. 391)

(Testimony of John W. Orton)

Cross-Examination

By Mr. Cannon:

The list of stockholders which you show me as of February 28, 1939, was prepared by me, as was also Exhibit 20 for identification which is dated August 23, 1939. The same number of shares were outstanding and of record on February 28, 1939, as were outstanding of record on August 23, 1939. When I talked with Morgan he did not give me any false information that I know of; and no one else did in connection with the preparation of the registration statement; nor in connection with anything else connected with this company, as far as I know.

Cross-Examination

By Mr. Blue:

I have never met Mr. Gordon, nor Mr. Schirm, nor Mr. Fischgrund, nor Mr. Collins.

Re-Direct Examination

By Mr. Evans:

My office in Salt Lake is about a block away from Mr. Morgan's office.

(The document heretofore marked Plaintiff's Exhibit 20 for identification, was received in evidence.)

(Witness excused.)

(At this point, there was offered and received in evidence, under stipulations, Plaintiff's Exhibit No. 21, photostat bank records of the California Bank of Los Angeles, having reference to the payment of $800.00 for some 200,000 shares of stock, as testified to by Mr. Adkisson.) [63]

E. P. EMERY,

a witness called by and on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Manster:

My name is E. P. Emery and I live in Salt Lake City and I am acting secretary for the Salt Lake Stock Exchange and have been in that position since November, 1931, and have held the position continuously since that date. I have produced the records of the Salt Lake Stock Exchange in connection with the filling of application by Union Associated Mines for listing on the Salt Lake Stock Exchange. Between January 1, 1930, and October 1, 1936, the price range of that stock was ¼ cent low, 6 cents high. (Tr. 401) This stock was de-listed on the Exchange December 18, 1936, and the application for re-listing which was filed with the Exchange in January, 1939, did not result in a listing of that stock.

Cross-Examination

By Mr. Cannon:

It was passed by the Board of Governors for listing. I do not have any price range of this stock prior to January 1, 1930. It was on the board six months prior to January 1, 1930. I have met Zell Truman and knew he was a witness in this case, and I know that he is a man of good reputation for truth, honesty and veracity.

(Witness excused.)

Mr. Manster: May I say that with reference to Exhibit No. 16 for identification, as I understand it, there is no stipulation as to the authenticity or as to the mailing or receipt of these letters. * * * (Tr. 403)

Mr. Cannon: We don't want to go through a lot of motions [64] to no purpose. I will say this frankly, if these purport to be letters and telegrams passing between certain persons, none of the defendants here, I might state, and Mr. Barclay, our primary objection to them, when they are offered, is that they are hearsay and have no bearing or binding effect on any of the defendants.

So far as producing a witness to identify them, that she typed them or that they were mailed or received, we don't see the necessity for that. We are not objecting to the foundation of them, but we do, each separately object to them on the ground that they are incompetent, irrelevant and immaterial in this transaction, because they are hearsay to each of the defendants. (Tr. 404)

* * * * * * * * *

Mr. Manster: If your Honor please, this exhibit contains letters between the witness Adkisson and Mr. Barclay. They are all within the period of the indictment, and they pertain to the market activities which Mr. Adkisson testified to.

In view of the stipulation of Mr. Cannon, as I understand it now, perhaps if your Honor read these letters, why, their competency or materiality could be decided upon.

Mr. Cannon: * * * (Tr. 405)

My point is that the letters themselves cannot be resorted to to determine whether or not they are competent so far as these men are concerned. That is the point.

Mr. Blue: May I add this, if the Court please? I think it shows particularly the position that the defendant in a case of this kind can be put to if these letters are

received in evidence. The fact that the man Barclay, who wrote these letters, and who delivered them—the fact that he is dead stops us from what is generally the inviolate right of the defendant, [65] to cross examine, because any letters of that kind written voluntarily, self-serving declarations—we have no way to take out any intimation that might be in there that might be misconstrued.

* * * * * * * * (Tr. 405)

Mr. Manster: May I say that Mr. Adkisson, whose participation very much appears in these letters—we have original letters from Adkisson to Barclay—has testified as a witness, and, of course, he may be recalled by either side if they wish to question him about these letters.

* * * * * * * * (Tr. 406)

Mr. Cannon: * * * (Tr. 406) If they do establish by independent proof that Barclay was a co-conspirator, then I realize the fact that his acts and declarations in the furtherance of the conspiracy are binding upon all the defendants. But, in the first place, until they establish the conspiracy by independent proof, not by the letters themselves but by independent proof, that he was a co-conspirator and that there was a conspiracy existing, his acts and declarations are not binding. As I say, that applies to a situation where Mr. Barclay were produced as a witness on the stand and we had the opportunity to cross examine. But when the witness is dead you have the rule further complicated in that we are not given an opportunity to cross examine the man, and that is why I think it is laying a dangerous precedent, particularly in view of the fact that we have here voluminous records that cover this whole course of conduct that

they can resort to, and use other means of proving it if they have any.

Mr. Manster: Judge, I think the probative value of these letters will be quite apparent if you will peruse them.

The Court: Well, they might have probative value; it is a question of whether they are competent. [66]

Mr. Manster: Well, I think their competency would appear from the substance of them.

The Court: Well, whether they would be binding upon these defendants, that is the question.

* * * * * * * * (Tr. 408)

Mr. Cannon: Counsel has now shown me Exhibit 15 for identification . . . (Tr. 409) As far as Mr. Morgan is concerned, I am willing to stipulate that the originals of these letters were written on or about the dates they bear, that they were transmitted to the persons to whom they were addressed in the normal course of the mails, that the telegrams were sent by the persons purporting to send them by telegraph on or about the dates that they bear. We have no objection as far as Mr. Morgan is concerned to the letters being introduced in evidence.

As far as Mr. Collins is concerned, I object to them on the ground that they are hearsay, but I am willing that they should go in evidence at this time as far as he is concerned, subject, however, to a motion to strike in the event they are not connected up.

Mr. Blue: Now, in reference to the defendant Gordon, my objection is as stated by Mr. Cannon. * * * (Tr. 410)

Mr. Manster: This may be offered, then, as Government's Exhibit 15 in evidence.

The Court: Yes.

Mr. Blue: Exception on the grounds noted.

The Court: Yes.

(The documents heretofore marked Plaintiff's Exhibit 15, for identification, was received in evidence.)

* * * * * * * * (Tr. 413)

Mr. Cannon: By the way, we have a whole batch of others, while we are working on letters, that counsel handed me and which he has not included in the other offer. They are [67] some more letters that Mr. Morgan delivered to the Securities and Exchange Commission, according to the testimony of the Securities Exchange Commission witness. I would like to offer those in evidence * * * (Tr. 413)

The Court: They may be Mr. Cannon's exhibit.

The Clerk: Defendant's Exhibit C.

(The document referred to was marked Defendants' Exhibit C. and was received in evidence.)

Mr. Cannon: I understand that they are received without precluding me from making a motion at the conclusion of the Government's case?

The Court: Yes. (Tr. 414)

Mr. Manster: That is satisfactory. May I proceed, Judge?

The Court: Yes.

Mr. Manster: With the reading of certain letters from the Government Exhibit 15 in evidence?

The Court: Yes.

Mr. Manster: Written by J. H. Morgan. (Tr. 415)

"July 29, 1938.

"Messrs. Christion Vrang & Chris Schirm
"612 Subway Terminal Bldg.
"Los Angeles, California.

"Gentlemen:

"(I hope) I have a party here we may interest in the Torrence field if something good could be picked up at a reasonable price. If the Torrence field is too far advanced and bonuses are running too high, let me know what you have that would be the most interesting. Now, I don't want any horseplay on this; if we make this party some money on the first deal we may be able to raise a lot more.

"I also have in mind acquiring a Utah Corporation that is already listed on the exchange, which we could use to move some stock.

"The Bullion Mines Company here had 400 acres at Colinga and the stock has jumped from ½¢ per share to 11¢ per share. This has created a little interest in California oil land for mining companies.

"Now, use your heads, and let's have the best deal that can be got out of California.

"Regards to everybody,

"Hurriedly yours," (Tr. 416)

"August 2, 1938.

"Mr. Christion Vrang
"612 Subway Terminal Building
"Los Angeles, California.

"Dear Chris:

"This will acknowledge receipt of your letter of July 31, and the Schedule 'A' attached. I was glad to receive the information in such detail and wish to congratulate you upon setting it up in such fine shape. However, the schdule is a little in advance of our present plans.

"The first step will be to acquire potential oil land and in the acquisition of such acreage to have sufficient time to work out and perfect the financing of a drilling program.

"From the map which accompanied your letter it apears that a third high will be reached Southwesterly. If that area is not now a 'hot spot' it may be worth while to acquire some acreage there. However, our party is in no way married to the Torrance field and if something better develops in another field, it would be better to make the selection at any spot that looks like future development will bring in a new field or extend an old one.

"I don't think we should try to play any area that has developed to the high bonuses. My own (Tr. 417) suggestion would be to keep close track of any area that seems quite probable. Please let me have your reaction and keep me advised as to the amount of money it would take to tie up a block of ground that would justify drilling.

"Enclosed find copy of letter to Sundance Unit holders. Please give this to Mr. Gordon and if he can help to the extent of $10.00 or $20.00 I would appreciate it. If things are too crowded, tell him to forget it at this time.

"Snyder's and Dan Kroder have signed up on all the acreage that they are to acquire on Beacon Dome and have agreed to put a rig on location by September 1st. San King and associates have joined with him and I really believe that there is a chance to have the Beacon Dome drilled this fall.

"Best regards to all.

"Sincerely yours," (Tr. 418)

Mr. Cannon: May I read at this time, if the Court please, the letter to which that letter was written as a response? It is in evidence.

The Court: All right.

Mr. Cannon: That letter starts out:

"This will acknowledge receipt of your letter of July 31st."

Here is the letter of July 31st, part of Government's Exhibit 14, addressed to Mr. Morgan.

"Dear Judge:

"Yours of the 29th inst. was received by both Schirm and myself yesterday.

"There is nothing available in the 'hot spot' in the Torrance-Lomita field at a bargain any more. Since the completion of a 1,500 barrel well southerly and southeasterly from the former completions, the day before yesterday, we look for stiffer competition than ever. All good acre lots call for a bonus of not

less than $1,500.00 bonus and 20% royalty. Deals have involved as much as $2,000.00 an acre bonus and 25% royalty, and money can be made upon those terms, too.

"I am enclosing herewith a schedule 'A' which should give you a comprehensive picture of how we are able to finance the drilling of a well. We are going ahead on one well on the basis outlined in schedule 'A'. (Tr. 419) Mr. Gordon and his son-in-law, R. R. McLachlen, have in mind a property that we are looking at today in Torrance which may suit you. If it can be had on workable terms will advise.

"There is no chance of losing in the present area as long as one secures a site on structure south and southeast of the old Torrance field, limited, of course, by the width and length of the structure.

"Would suggest that your party be ready to fly here the minute we are able to tie-up (option) a suitable piece of land. $1,500.00 to $2,000 will be needed to place the deal in escrow in a Torrance bank. It takes three weeks to pass the title people. Thereafter, about $15,000.00 will be required to drill the well in. After the hypo*tecated* percents are returned the company will enjoy a large income, as you will see from the enclosed schedule.

"I know what you require in the way of press notices and maps which we will send to you as soon as we are able to get them.

"I note what you say about the Coalinga area. The recent Petroleum Securities (an E. L. Doheny company) well is good for 20,000 barrels. Geologists now predict the Coalinga district to be another

East Texas oil pool at greater depth—at the depth where the recent new sand was struck. No doubt the (Tr. 420) Bullion Mines Co. have some producing acreage in Coalinga which might net them a great fortune.

"Will write again tomorrow. With best wishes,

"(s) Christion Vrang."

Christion Vrang.

Mr. Cannon: I would like to find that Schedule A that is spoken of there.

Mr. Manster: All the papers we have are here. If there was a Schedule A it was not submitted to us.

Mr. Cannon: I saw it this morning.

Mr. Manster: If you saw it we will have it.

Mr. Cannon: Go ahead. I will pick it out.

Mr. Manster: We will read these in chronological order. I think that will be better.

Mr. Blue: Mr. Cannon, may I suggest in reading this letter the name "Christion Vrang, Geologist" is at the head of the letter.

Mr. Cannon: All right.

Mr. Manster: Judge, if you will give us the time we can read every one of these letters. I might say at this point I had in mind reading a certain number of letters and then if Mr. Cannon and Mr. Blue desire to read other letters we would have no objection.

Mr. Cannon: I will not interrupt him any more.

Mr. Manster: If, however, Judge, you feel we should read every one we can do so.

The Court: You are the one that is trying your case. (Tr. 421)

Mr. Manster: Yes.

Mr. Cannon: I won't interrupt him any more. I am sorry I did.

Mr. Manster: I suggest that the Government be permitted to read what letters they deem material and then counsel can read what other letters they wish.

The Court: After that is done the whole thing will probably be meaningless.

Mr. Cannon: He can do it any way he wants. I won't interrupt him.

Mr. Manster: (Reading)

"612 Subway Terminal Bldg.,
"Los Angeles, Calif.
"August 10th, 1938.
"J. H. Morgan, Esq.,
"526-7 Utah Oil Bldg.,
"Salt Lake City, Utah.

"Dear Judge:

"Your 6th instant answering my 4th instant, to hand Monday morning, the 8th. You advise that you are returning my letter 'marking out what . . . should be included . . .' The letter was not enclosed. Hence I am enclosing a letter what may serve your purpose.

"Am going to see Art Adkisson again, and at the same time make some estimates on the probable earnings. (Tr. 422) It is stated in these parts that the Bullion Mines' stock should be worth 50¢ but so far have been unable to ascertain the bases for such estimates. Will dig into the situation and advise. Seems to me, however, that Bullion is a good buy at 4½.

"Agate well still fishing but adjoining well on Sandford structure down about 5,000 feet.

"We are still fussing away with the Torrance-Lomita area. It's a poor man's field. Ordinarily acre lots would be demanding from $5,000.00 to $10,000.00 each, judging by what has happened in the other fields, as per Huntington, Signal, Athens, Lawndale, etc. A 500-barrel well can be obtained for as small an expenditure as $15,000.00.

"Hoping that all is well with you. With best wishes from the 612-gang.

"(s) Chris
Christion Vrang."

"August 12, 1938.
"J. H. Morgan, Esq.,
"526 Utah Oil Building,
"Salt Lake City, Utah.

"Dear Judge:

"Chris Schirm called my attention this morning to a mistake in my yesterday's (the 11th inst.) letter (Tr. 423) to you. It is in reference to the small oil refinery that Schirm proposed to put into the Golconda. The plant is netting over $3,000.00 (three thousand dollars) per month. The refinery site is on fee land and we can drill a well on same. An oil well in the back yard of the refinery. That is one for Ripley, Believe It or Not. All we are require to do is to open the back door and let the oil come in.

"I am enclosing a copy of letter having to do with the proposed purchase of control of the Union Associated, once on the Salt Lake Stock Exchange.

Schirm has proposed that you provide safe conduct, ways and means, etc., so that the matter may be consummated. We do not ask your financial help but know that you are familiar with the situation and can help us. If . . . goes to Salt Lake City he will call on you. It now appears that I shall soon be in Salt Lake City myself as A. W. Harper has asked me to come to Shoshoni as soon as he can raise some money. If that comes to pass within the week you should see me there about a week from today and could spend a day with you lining up matters.

"The biggest wells are yet to come in in Torrance. The area is bound to be hotter and hotter. I recomment that we go in now ahead of the higher prices (bonuses) (Tr. 424) and royalties are bound to prevail.

"With best wishes,

"(s) Chris V.
Christion Vrang.

"August 12, 1938.
"J. H. Morgan, Esq.
"526 Utah Oil Bldg.
"Salt Lake City, Utah.

"Dear Judge:

"Now is the time for action in Torrance and all we want is a good corporation so that we need not be delayed by the California Corporation if we have to go the percentage route.

"If the Golconda Company or any other mining company which has been dormant and which has a suitable stock set up and which you can get control

of on a basis that we will not be obliged to lay out any money to secure control, as it is my purpose to use what little money I have on hand for actual development in the field in starting a well and also to get the proper publicity under way to stimulate stock sales.

"I have now a proven drill site that can't miss and have deals well under way for derrick and equipment and so forth which I will put in the deal when you have control. (Tr. 425)

"I also have a verbal option to acquire a small refinery in this field, for stock, if as and when we are ready to go. This I consider a valuable asset as it will insure full production of our well, or wells no matter how many are brought in as well as more profits.

"A close friendship of many years standing makes this refinery deal possible. The plant today shows a handsome profit which can be increased with more facilities.

"I know it will be difficult to consummate a suitable deal by correspondence, so if you have what you know to be a deal I will come there with my principle immediately and assign my holdings and we will be on our way.

"Then we can announce to the press our future program and start active working which will at once have the full cooperation of all brokers there and here. As discussed with you last month, you would be placed on the board as an officer as well as the legal representative.

"Very respectfully,

"(s) Chris Schirm
Chris Schirm.

"612 Subway Terminal Bldg., (Tr. 426)
"August 17th, 1938.
"J. H. Morgan, Esq.,
"526 Utah Oil Bldg.,
"Salt Lake City, Utah.

"Dear Judge:

"Your special delivery of the 17th (Wed.) arrived tonight. I thought it was for me only noticing the J. H. Morgan in upper left hand corner. It is 8 p. m., and Schirm is home, having left the office about 4 p. m. today.

"I am quite sure Schirm will be delighted with the news you have conveyed to him in your letter. I am enclosing herewith a 'Proposed Plan to Finance an Oil Company' and it is going to fit in perfectly with the news you have outlined.

"I am leaving tomorrow night for Salt Lake and hope that either you or Dan Kroder can get me a 'pass' on the Western Air Express. Short on funds as usual but will garner something in Salt Lake somewheres. I think that Chris Schirm will get a check to cover the expense needed as follows: $50+ $150+$50 to put the Union Associated Mines Co. in good standing and on the Salt Lake Mining Exchange again. And further think I can take the check with me. I may even be commissioned to get further details from you while up there. I should be in Salt Lake Friday but will see you (Tr. 427) Saturday morning at any rate if compelled to take the bus.

"With best wishes,

"(s) Chris
Christion Vrang."

I will read the proposed plan.

Mr. Cannon: This is the proposed plan attached to the last letter, is it?

Mr. Manster: That is right. (Reading)

"A Proposed Plan to Finance an Oil Company."

Mr. Cannon: That Vrang sent to Morgan?

Mr. Manster: That is right. (Reading:)

"Under the present Blue Sky law in California it is practically impossible to form a new company and get a permit without so much red tape and loss of time that the possible profit is not worth the efforts necessary to start a new enterprise.

"Realizing that to accomplish almost anything worth while one must have a corporation to avoid personal liability and add strength and stability to the enterprise and to secure the necessary capital, one is compelled to try and find a way to accomplish his object without operating contrary to the law.

"Most people who are attempting to start new enterprises in California are resorting to what is known as a limited partnership or as a closed permit. (Tr. 428) The partnership, of course, does not come under the Corporation Department and while the latter form of operation does come under them it is quite easy to comply with and therefore quite popular.

"Neither of these plans can ever produce success except in a very limited way as capital in sufficient quantities can not be had to insure permanent success in the oil business. Under our present State and National laws it seems that every restriction is placed in the way of new enterprises and the public hesitates to join in new ventures.

"However, there seems to be at present a noticeable desire in the public in general to try and make a start to see if it is not possible to get back a portion of what they once enjoyed and it also seems to be the general opinion that they might do this by joining in the oil business which at the moment seems very hot.

"In keeping with other opinions the writer has also tried to formulate a plan whereby we might join in this movement and get in the oil business which seems to be so easy to make money in, and get it fast, and also it is treated more leniently than wealth created in other ways as to taxation. However, no plan can hope to succeed unless it provides some method that will continuously furnish the operations (Tr. 429) with new capital.

"As pointed out a new company is out of the question if one desires to raise capital, therefore the only method is to secure control of an old company, preferably a mining company whose stock is or has been listed and thru advertising make the public become interested in the issue by drilling wells and telling about it in the papers. The old method of salesmen going and soliciting investors is obsolete.

"The public are, as pointed out, ready for something to make quick money with a small investment, and particularly in oil. Therefore the first thing to do is to form a holding company to operate thru, that is these closed permits are the proper vehicle to apply for permits and they should be composed of men who know the oil business, this will create confidence in the mind of the commissioner and the people who come in the closed permit. These closed permits should be sold at the actual cost of the well, holding the usual 30% necessary to operate the well.

"When a well is completed, or sooner if desired, the well is turned over to the mining company for stock, which in turn is placed on the market to raise new money. The mining company should be a native of a state which has liberal laws and stock can be readily marketed in several states. (Tr. 430)

"For instance, a completed well could be sold to the mining company say, for 300,000 shares, and by keeping 200,000 shares and selling 100,000 enough cash can be had to drill the second well.

"In this manner the original holding company always has control of the mining company. Control of its own company which never sells a share of its stock, excepting the original shares that are issued to its original incorporators and control of the production.

"By studying the past performances of companies which have drilled wells and got production one can readily see how very interested the public is in such ventures. Every company or individual that has completed a successful well as their first venture have never experienced any difficulty in securing further capit*or*. The principal reason the Standard Oil Company never fails in whatever country or state it starts operations, is not because they can drill wells cheaper or better than the small company, but because their first move before starting business is, they sufficiently finance themselves before starting business. By this method it makes no difference whether their first well is a success or failure, because they go right on until they hit a well.

"By this method explained herein the wells (Tr. 431) could be placed in the mining company only

after they were producers and this method would so instill confidence in the public they would follow your operations like sheep.

"Money was never more plentiful in the U. S. than today; I mean it is practically all laying idle in the banks, mostly thru fear. Therefore to he who can create confidence in the minds of the owners of this capital can automatically have all the available cash needed for any enterprise. No new enterprise has much chance of becoming larger than the imagination of the promoter, and for that reason, one well deals have very little chance of succeeding unless an intelligent plan of continuous operation is planned."

"August 15, 1938.

"Chris Schirm,
"612 Subway Terminal Building,
"Los Angeles, California.

"Dear Chris:

"Answering your letter of August 19th—"

Mr. Cannon: Pardon me just a minute. I think we can probably stipulate that letter is in error. The letter is dated August 15th and it refers to a letter that has been received of August 19th. The matter was called to the attention of the S. E. C. by Mr. Morgan, that it was an error, (Tr. 432) and the letter was written right after August 19th.

Mr. Blue: We will stipulate that. There is no argument about that.

Mr. Evans: That is correct.

Mr. Blue: Some time in the month of August.

Mr. Manster: (Reading:)

"Dear Chris:

"Answering your letter of August 19th, most of the—"

Pardon me. May I withdraw my reading of the last letter. There is a mistake there and I withdraw it. (Reading:)

"August 19, 1938.

"Mr. J. H. Morgan,
"526 Utah Bldg.,
"Salt Lake City, Utah.

"My Dear Judge:

"Answering your letter of August 17th in which you state that the Union Associated has 700,000 shares outstanding and that 350,000 is owned in the East and 350,000 in Salt Lake and that we can get 200,000 of this 350,000 Salt Lake shares. Who will own the other 150,000 of the Salt Lake shares and would they play with us? Or would they tear down our market? Are they the same people we would buy from?

"Could you secure a board of directors in (Tr. 433) Salt Lake City who would be men of good standing? Would you act yourself on the board? For your information, here is the way we will operate here. Mr. Gordon has an oil company of which he is president called the Plymouth Oil Co. The McKeons will do the drilling. The Plymouth Oil Co. will take leases and start a well and turn same over to the Union Associated for a certain block of stock and guarantee to complete the well. The well would

be known from that time on as the Union Associated well. Under these conditions do you think the Salt Lake brokers would wake up and take an interest in this stock and try to sell it?

"One of us will leave here not later than next Tuesday morning if you think we can do some business there. We will have with us a Los Angeles broker who can and will talk broker language to your people and the Los Angeles brokers will do their part. I want you to have a letter here for me not later than Monday morning answering these questions and if your letter is favorable you will receive a wire back from me stating the hour we are leaving here.

"Sincerely,

"(s) Chris Schirm." (Tr. 434)

August *15,* 1938.

"Chris Schirm,
"612 Subway Terminal Building,
"Los Angeles, California.

"Dear Chris:

"Answering your letter of August 19th, most of the 150,000 shares of Union Associated in Salt Lake will play along with us. There will be a few small certificate that we cannot control but it in my opinion will come in on the first bid at 1¢ or 1½¢.

"I think it will be a serious mistake to use Salt Lake men entirely on your board. The company must have a background of substantial oil men,

which we haven't here. I think Fred Gordon should head the company and Mr. Malia (former Bank Examiner of Utah) act as secretary or treasurer. But you must have a background of oil men to create the interest in the stock. You should be careful not to skim off all the cream in the deal between lessees, Plymouth Oil Company, and the Union Associated. Of course, your brokers will want to watch that as much as interested parties here would.

"With the right kind of set-up I feel quite sure that considerable stock could be moved here in Salt Lake. (Tr.435)

"Expecting to hear from you definitely, I am continuing with the arrangements to acquire the Union Associated.

"Sincerely yours,"

"August 24, 1938.

"Mr. Chris Schirm,
"612 Subway Terminal Building,
"Los Angeles, California.

"Dear Chris:

"I expected to hear from you today. Please advise me the present status of the dealings on the Union Associated and your land in Torrance.

"I can't hold this present deal on the outstanding stock any long period of time, so please advise me at once when you expect to be in Salt Lake.

"Very truly yours,"

"September 3, 1938.

"E. Byran Sienes.

"Dear Sir:

"I hand you herewith nineteen (19) certificates of Union Associated Mining Company representing 170,033 shares for which I have received $800.00. I hearby agree to deliver additional 30,000 shares (Tr. 436) making total 200,000 shares for said $800.00.

"Very truly yours,"

The next one is on the stationery of Sidney Fischgrund, Attorney at Law, 707 South Hill Street, Los Angeles:

"Sept. 6, 1938.

"My Dear Morgan:

"Since wiring and writing you, Mr. Adkission and I have been talking it over and we both think there is one vital first step and that is to pay that tax so the company is in reality an entity and can confirm your other directors meeting and also close our deal.

"I don't mean all the debts, I mean the actual payment of the franchise tax. As discussed at the meeting yesterday, one man said ten dollars, of course I know that is not correct. Our yearly franchise tax here is $25.00 per annum and you may owe two or three years. At any rate we must be in a position to transact business legally immediately.

"Answer by wire.

"Sincerely yours,

"E. Byron Siens (s)

"E. Byron Siens."

Defendant Fischgrund: Stipulate that my name does not appear on that, and that it was not written in my office. I don't know how the stationery was acquired by him. (Tr. 437)

Mr. Cannon: Wouldn't it be stipulated as of this date, September 6, 1938, that the Union Associated owed no other debts than the franchise tax?

Mr. Manster: I don't know.

Mr. Cannon: Well, we will check it. Counsel says he dosn't know. We will check it. I think that is the fact.

Mr. Manster: All right. It may be.

"September 7, 1938.

"Mr. J. H. Morgan,
"526 Utah Oil Bldg.,
"Salt Lake City, Utah.

"My Dear Morgan:

"I am enclosing herein a check for $75.00 in payment of whatever is necessary to re-establish the entity of the Union Associated Mines Co. I acknowledged receipt of your letter with stock enclosure on the phone. I regret very much the error we made of mailing you an important letter without putting an airmail stamp on it, because as explained I was waiting and waiting for you to wire me stating the amount necessary to reinstate the Union Associated.

"We will expect you to hold a directors meeting immediately upon the payment of this tax and confirm all actions of the last meeting of the directors.

"For your information I am working on a deal which will give the Union Associated an oil well

which (Tr. 438) stands on 72 acres but produces very, very heavy oil, in fact they had to sell the last oil they produced for thirty cents a barrel.

"This 72 acres of land, however, is very stragically located, being about half way between the Torrance and Lomita field and the Bend area, and now that they have struck this heavy coarse oil at 3500 ft. on this property it is very reasonable to suppose that the other sand will be found at the 5000 ft. level. This 72 acres, I proposed to put in with Torrence lease which will as proposed, by Mr. Barkly, stimulate the stock sales. It is my plan at present to have Mr. Adkisson in your city not later than Sunday night with the contract between the Union Associated and the Plymouth Oil Co. ready for signature.

"Everything is moving along satisfactorily here and both Mr. Schirm and Mr. Adkisson are working with me 100%. I firmly believe that in addition to the 72 acres that we will have production in Torrence going into our tank within 30 days or less from the date of this letter. I mean a complete well in which the United will own its full 50% interest. I will be able to tell you more about this tomorrow. In the meantime I will conclude by requesting that you extend to Mr. Clayton my very kindest regards. Mr. Adkisson also wishes to be remembered to you both. (Tr. 439)

"Very truly yours,

"E. Byron Siens (s)

"E. Byron Siens."

The next one is dated September 9, 1938, on the letterhead of Sidney Fischgrund, Attorney at Law.

Mr. Blue: Pardon me for interrupting you. Will you say who signed the letter, for our convenience, instead of giving it at the end?

Mr. Manster: Fine. I will do that. This letter is signed by E. Byron Siens.

Mr. Blue: Thank you.

Mr. Manster: (Reading)

"September 9, 1938.

"Mr. J. H. Morgan,
"526 Utah Oil Bldg.,
"Salt Lake City, Utah.

"My Dear J. H.:

"I have been so busy that I did not get a chance to drop you a line yesterday, but I don't want you to think that I am sleeping on the job, because I eat, drink and sleep our deal. I am trying very hard to get everything ready for the boys to come up there Sunday night. That is I want the properties all tied up in a nice package and everything ready to close our deal. (Tr. 440)

"I have a man who is eminently qualified to be the president of the Union Associated in the person of Mr. R. R. Bray. He was the inventor of Mr. Doheney's Hydrill out of which Mr. E. J. Doheny made many millions. Of course Mr. Doheny was a clever man and after about three trades with Bray, Mr. Doheny owned all the deal.

"Bray is not mercenary, just a wonderful clover technical expert, also a mining engineer. In fact it is through and by his brains the oil industry is able to drill deep holes today. He personally went to

Pittsburgh and showed the Steel Companies' Engineers how to make a drill collar hold together at over a mile down in the ground. He is not only a fine gentleman, but can qualify as an expert oil man in all of its departments.

"He is a friend of many years standing with both Mr. Gordon and me. I know you will like him and get along with him and with such associates we can not fail to build a real company.

"Will have some real news for you tomorrow.

"Sincerely,

"E. Byron Siens (s)
"E. B. Siens."

"P. S. How about the taxes, etc.?" (Tr. 441)

Mr. Manster: On the stationery of the Plymouth Oil Company, from E. Byron Siens to Mr. J. H. Morgan, September 10, 1938:

"Mr. J. H. Morgan,
"526 Utah Oil Bldg.,
"Salt Lake City, Utah.

"My Dear J. H.:

"Received your letter of Sept. 9th and your quotation of the stock distribution is correct.

"Now I want you boys to be satisfied, and if either you or Mr. Clayton are in any way displeased with this arrangement, now is the time to let me know.

"In fact we can only make a success of our business if every one associated with the deal is satisfied and works for the one end: Success for the enterprise.

"No one person can accomplish very much, that is why corporations are formed, to create a harmonious organization, and unless all parties are satisfied, failure is sure to follow. I am more than pleased with our connection with Mr. Bray and I can say this much for him, we the Plymouth Oil Company will not drill on any property that he does not O.K.

"He will be of great value to both the Plymouth Oil Co. and the Union Associated. Now you state you (Tr. 442) expect the company will be reinstated by tomorrow, meaning the 10th or Saturday. I was planning to send Adkisson and Bray up there Sunday night, but if you are not sure of the work being accomplished I will wait until the first of the week.

"In fact I can use the time very advantageously, so I will change our plans to Monday night or Tuesday night. You also mention you will hold a directors meeting if Mr. Weeks returns. Now as I recall it you have three directors right there and can hold a directors meeting at any time you desire. Of course when Bray comes up you will elect him a director and then president.

"Mr. Adkisson is right on his toes and has *there* brokers all on their toes just waiting for the word to go. That is one reason why I want him there when all our arrangements are completed. He will bring the 200,000 shares *bach* and have them issued into proper sized certificates for the brokers to handle. I think one of the first things to do is to appoint a transfer agent and as soon as our other stock is issued take the stock book to them and that will give all brokers much more confidence in our project. Oh, yes, one thing you must do at once is

to acquaint yourself with the law on the stamps that goes on the re-issued stock and also on the new stock. However I (Tr. 443) think in our case that every share of the 3000,000 shares capital has been issued and thereby we will save quite some cash. But we want to have it all done right and legal and I will of course leave that point to you.

"Very sincerely,

"E. Byron Siens (s)
"E. Byron Siens."

This is September 13, 1938, from John H. Morgan to Mr. E. Byron Siens:

"Mr. E. Byron Siens,
"911 Forman Building,
"Los Angeles, California.

"Dear Mr. Siens:

"Enclosed herewith find certified copy of the re-instatement of the Union Associated Mines Company, also, a new resolution made by the company.

"The directors held a meeting this morning and ratified all the acts taken by the former directors held in the meeting of September 6, 1938.

"My suggestion is, that the advances made by you to the Union Associated Mines Company to reinstate the corporation and take care of whatever has to be taken care of should be treated as loans to the Union Associated to be repaid as soon as any money (Tr. 444) is in the treasury of the company.

"I have been working daily on the old minutes and other matters concerning the company, and I think we have everything practically brought up to date. There is still quite a little work to do on the stock books and ledger, and the bookkeeper I had in mind has been sick for a few days. If he doesn't return to his office in the next few days, I think I had better secure another one and have the stock books brought up.

"We all feel that your selection of Mr. Bray is an excellent selection, and I am sure we will all be glad to cooperate with him.

"Please keep me advised of any matters you wish taken care of.

"Very truly yours."

On the stationery of the Plymouth Oil Company:

"September 13, 1938.

"Mr. J. H. Morgan,
"Salt Lake City,
"Utah.

"Dear J. H.:

"I am wondering why we don't hear from you about the company. We have the property all assembled and a commitment to drill a well or start one in Torrence in (Tr. 445) 30 days. The days have a habit of slipping by pretty fast and we want to close our deal there now as quickly as possible. For your information the McKeons cored 800 ft. of nice oil sand in their wild cat south of Santa Fee Springs and we are getting a play there through our con-

nections with Mr. McKeon. Wm. Lacey put up $10,000.00 cash to make this play with. I am speaking now of the Plymouth Oil Co. However, anything we have the Union Associated can have a part of because we know they can be if handled right our most useful asset.

"McKeon expects this to be the biggest well and field the basin has ever developed. Of course it is over 8000 feet deep but all of California's big wells are coming deep today. We have about run out of shallow discoveries. That's why Torrence has had such a play. And only a short time past it would have been considered deep but today it is past hole digging.

"So moves the world. However the question is: How goeth the Union Associated? If you are ready, we are. Let me have a wire when you receive this.

"Sincerely,

"E. Byron Siens (s)
"E. B. Siens." (Tr. 446)

On the stationery of the Plymouth Oil Company, September 14, 1938, from E. Byron Siens to Mr. J. H. Morgan:

"My Dear J. H.:

"Everything is now in order for us to close the deal between the Union Associated and the Plymouth. After very careful thought I believe the manner in which we should close this deal is to present the contract to the Associated directors and accept the deal and issue all the stock immediately for many reasons. We know to start with that we have to

submit a statement of the Union to this Gov't. department and when we do it should reflect a closed deal. In other words we expect to sell this stock to accomplish our work and we don't want to show a deal half completed that some clerk can say, 'Hold up that deal until you answer a number of questions.' If the deal is closed, the Plymouth gets all of their stock and passes it on to the brokers and the incident is closed and before any questions can be asked the Union owns half of an oil well. Then we are sitting pretty and everybody is satisfied.

"I think everything should be done in a systematic manner to re-instate the company on the board, but there's no hurry about that. The brokers can and will sell this stock 'over the counter' and make more profit than if it were actually listed. (Tr. 447)

"However, on the next well or development we want to do, we will have it listed and we can then enjoy the market the brokers built up out of this first issue. Now as to the properties. We have included three properties: The acre in Torrence, the acre in Lomita and approximately 72 acres in Wilmington upon which there is a well.

"I propose to give the Union 50% of the completed well in Torrence, 25% of the Lomita property and 25% of the Wilmington. It is my plan when we are ready to drill either one or both of the other properties we will make a new deal with the Union and deed them another 25% interest in the property to be developed, for so much stock. In other words it is my intention that the Union will own 50% of each well but we cannot consummate that deal now as we will have to make these new deals as we come

to them. I think you will agree with me that the only way we can feel our deal will be completed is to close it as I have outlined. I personally cannot come up at this time and did not want any one but myself to explain my ideas on the subject to you. At this moment I can't say just what plane the boys will come up on, but I will wire you when they leave.

"Sincerely,

"(s) E. B. Siens.

"E. B. Siens." (Tr. 448)

"P. S. I received both your letters and wire for which I thank you.

"(s) E. B. S." (Tr. 449)

Mr. Manster: This is from John H. Morgan to E. Byron Siens, dated September 14, 1938.

"September 14, 1938.

"E. Byron Siens,
"911 Foreman Building,
"Los Angeles, California.

"Dear Mr. Siens:

"Answering yours of September 13th, I had written you air-mail immediately after holding the meeting of the Union Associated advising you that the company had been reinstated, that a meeting had been held ratifying all the acts and resolutions passed in the meeting of September 6th; also enclosing a certified copy of the reinstatement and a new resolution authorizing the deal between the Plymouth Oil and Union Associated.

"After receiving your airmail this morning I wired immediately, so please advise me if my former correspondence has gone astray.

"Your letters certainly sound very encouraging, particularly the play in South Santa Fe Springs. Looks like with the Plymouth Oil making deals for the Union Associated there is certainly an excellent chance for that stock to go way up.

"I have not answered your second paragraph of September 10th before, because I have not had a (Tr. 450) chance to discuss the matter with Mr. Clayton. As explained to you and Mr. Gordon, Mr. Clayton thought that he should have been entitled to more than 10,000 shares on the first deal, but I think your later suggestion has pretty well solved the problem and especially in view of the fact that we both have been a little successful in buying some of the loose stock. I feel this will be beneficial in both ways, first, because it gives us a greater interest; second, it will assist materially in keeping the poorly held stock off the market.

"I think this practically answers all of your correspondance to date, and again complementing you on your deals for Plymouth and incidentally the Union Associated, I remain,

"Yours sincerely,"

"P. S. Best regards to Mr. Adkisson and Mr. Schirm."

This letter is on the stationery of the Plymouth Oil Company, dated September 23, 1938. This is by R. R. Bray. Maybe you don't want that?

Mr. Cannon: All right, sure.

Mr. Manster: All right. This is R. R. Bray.

"September 23, 1938.

"Mr. J. H. Morgan,
"526 Utah Oil Bldg., (Tr. 451)
"Salt Lake City, Utah.

"Dear J. H.:

"I was thinking that it might be good for the auditor to send me his set up of the new deal in the rough of Union Associated books, before you have him make the actual entry in the books.

"I will submit it to my auditor and perhaps I can give some suggestions that might help the company materially in their income tax payments.

"My man is an experienced oil auditor which helps materially in dealing with the Government.

"I think we should have a letter sent to all stockholders at once telling them of this deal with the Plymouth which might keep their shares from interfering with the market.

"If you have no letterheads and envelopes, we will have some printed if you will send us a copy with address, etc., as you think it should be.

"Got home in good shape, but trip was a little rough.

"Best regards,

"R. R. Bray (s)
"R. R. Bray."

Mr. Manster: Judge, I wonder if I might ask whether you are prepared to rule on the Adkisson-Barclay letters, for this reason. We have been folowing practically in (Tr. 452) chronological sequence, and I am up to September 23, 1938 now, and those particular letters, I believe, commence with September 23. If your Honor wishes to make a ruling on them, why, we might proceed with it if you rule to admit them in evidence. If not, Judge, I can continue with the rest I have here.

The Court: Go ahead with what you have.

Mr. Manster: (Reading)

"September 24, 1938.

"Mr. R. R. Bray,
"911 Foreman Building,
"Los Angeles, California.

"Dear Mr. Bray:

"Answering your letter of September 23: I will not see the auditor until Monday, but at that time I will go over them with him and get a preliminary setup of the Union Associated books for your auditor to examine.

"Mr. Adkisson suggested that you and Mr. Siens should work out a letter to the stockholders telling them of the new deal. I, too, think that this letter should be sent out immediately so that there would be no interference with the market when the stock starts moving.

"We have no letterheads nor envelopes, so if you will have some printed it would help out (Tr. 453) materially. I think your own letterhead is excellent

and would suggest the same type. The lettering would be as follows:

"UNION ASSOCIATED MINES CO.

"Was. 2130
"526 Utah Oil Building
"Salt Lake City, Utah

"Mr. Adkisson will *not* doubt see you today and will report on developments to date. I think everything is moving along very nicely but be free to call on me for anything that you might think will help matters along.

"With best regard to Mr. Siens, Mr. Adkisson and yourself, I remain,

"Sincerely yours,"

I am skipping two letters in this exhibit 15 in evidence.

Mr. Cannon: You have skipped a lot of them, but that doesn't make any difference as far as I am concerned.

Mr. Manster: I skipped one dated September 27, and another one dated September 27. I have skipped two letters, Mr. Cannon, both dated September 27. You can read them, if you want to.

"September 30, 1938.

"Mr. E. Byron Siens, (Tr. 454)
"911 Forman Building
"Los Angeles, California.

"Dear Mr. Siens:

"Enclosed find certified copy of letter from Mr. Gull, director of the State Securities Commission of Utah. As the letter refers to the letter I wrote

to the commission, I am enclosing a copy of my letter. If you will analyse the situation, you will see that the commission not only approves of the issuance of the 635,000 shares from the Treasury of the Union Associated, but also approves of the transaction as far as the Plymouth Oil Company is concerned in the State of Utah.

"Apparently the Los Angeles brokers have been placing some bids for the stock. The market jumped to 2½¢ today, and there seems to be considerable scramble for stock. Brokers are writing all stockholders that they have ever done business with. The local market seems to be cleaned up entirely and a bid of 4¢ might not bring out very much stock. But if any of the brokers should get in contact with some of the out-of-State stockholders they may be able to secure stock at a much lesser price, so I would advise them not to run the market up too rapidly.

"I expected to hear from you today acknowledging receipt of all the stock to be delivered to (Tr. 455) you. Please do so at your earliest convenience and when convenient please mail the 70,000 shares in certificates as follows:

3—10,000—Oscar Chytrus
1—5,000
1—10,000—John Clayton
1—5,000
5—1,000
2—5,000—J. H. Morgan
5—1,000

"Trusting to hear from you by return mail, I remain,

"Very truly yours,"

The next letter is on the stationery of the Plymouth Oil Company, dated October 1, 1938, from Mr. E. Byron Siens to Mr. J. H. Morgan.

"October 1, 1938.

"Mr. J. H. Morgan
"526 Utah Oil Bldg.
"Salt Lake City, Utah.

"Dear J. H.:

"I neglected to acknowledge receipt of the various certificates but I did wire you acknowledging (Tr. 456) the error of an over issue of one certificate and advised you to proceed with the letter since which time I have received all the certificates and turned same over to the brokers, for which I hold their receipt.

"I have given them instructions to issue the shares as mentioned in your letter with the exception of that to Mr. Clayton. It was my understanding, and, I think yours, that Mr. Clayton at this time is to receive ten thousand shares. The reason I think this, is because of the third paragraph in your letter to me of September 9th.

"Quote:

" 'As per the agreement with you I advised Mr. Clayton that you were willing to issue an additional 10,000 shares to him when a second deal is made for another well. In other words our understanding is as follows: For the work performed in acquiring the 200,000 shares of outstanding stock—10,000 shares was to be issued to Mr. Clayton and 15,000 shares to myself. For going on the Board of Directors and assisting in lining the company up,

Mr. Clayton was to receive an additional 10,000 shares to be delivered when a second deal is made and stock can be taken from the (Tr. 457) Treasury.'

"I think you will also recall getting a letter from me on the next day, September 10th, second paragraph of which reads: Quote.

" 'Now I want you boys to be satisfied and if either you or Mr. Clayton are in any way displeased with this arrangement, now is the time to let me know.'

"I had no complaint or response to this letter and naturally supposed that we had completed the deal. By the way Mr. Barclay now wants me to write the stockholders a letter which I think is O.K. as they have already received the company letter and he will ask you for the stockholder list and you may give it to him. He can't hurt us now & may help us a lot. He is handling the situation there to the satisfaction of Mr. Adkisson, therefore he is 100% with me.

"We will be doing something real now this coming week & if our stock is not 25¢ a share in less than 60 days I will be very disa*po*inted.

"Sincerely,

"E. Byron Siens" (s)

Will you excuse me a moment, please, your Honor? (Consultation.)

Mr. Manster: October 10, 1938, from John H. Morgan to (Tr.458) E. Byron Siens:

"Dear Mr. Siens:

"The auditor's work, in order to give a certified statement as to the present status of the outstanding stock, has taken longer than anyone expected. He has just completed his trial work sheet today and has promised me a completed sheet by Tuesday or Wednesday. I will have my secretary run off a copy for you immediately thereafter. The outstanding stock is a few thousand shares less than the amount submitted to us by Truman. Truman's statement was 747,000 and the trial sheet will show, I think, about 742,000.

"He is starting on the financial statement, and I will submit the rough draft to you (as per Mr. Bray's request) as soon as the rough draft is completed.

"I have received a number of calls in way of explanation of the Union Associated deal. I find that the response is much more favorable if it appears that the Union Associated acquired some California oil land and then made a deal with the Plymouth Oil Company for drilling. It sounds too much like a purely stock deal for the Plymouth to furnish the land and the drilling also. This is merely a thought that you may use or not as you see fit.

"It apears that Mr. Barclay is holding up his market letter waiting for the geological report on the (Tr. 459) seventy acres. It seems to me advisable to have that market report into the hands of the old stockholders at the earliest date possible. I know of nothing that would induce them to hold their stock more than a market letter from a reputable

broker. If there is anything I can do or if there are any suggestions that you may have, you may rest assured that I will drop everything else in order to hurry the matter along.

"Sincerely yours,"

Perhaps one more letter, Judge, and then we might close.

The Court: All right.

Mr. Manster: October 10, 1938, from John H. Morgan to Mr. Fred V. Gordon:

"Mr. Fred V. Gordon
"612 Subway Terminal Bldg.
"Los Angeles, California.

"Dear Mr. Gordon:

"Pursuant to our conversation at the airport, I am enclosing herewith a form of affidavit for Miss Dean to sign.

"I was not acquainted with the date or county in which Miss Dean was born, so I am leaving those spaces blank. You can either fill them in yourself or run off another copy of the affidavit. When completed (Tr. 460) mail same to U. S. Land Office. Evanston, Wyoming.

"When you were leaving for the plane the thought I had in mind was this: On the Union Associated deal it would appear better for the Union Associated to have acquired the oil land and then they could make an agreement with the Plymouth Oil Co. for development (at least as far as any newspaper publicity is concerned. Of course, I realise this could

not be set up before the Corporation Department or the S. E. C.)

"I hope you arrived home safely and your Texas deal is going through, but you know how anxious I have been on the Beacon Dome so please advise me if there is any possibility of your returning to Salt Lake within the next ten days.

"With kind personal regards to Schirm, Mr. Dodd, and yourself, I remain,

"Very truly yours." (Tr. 461)

At this point it was stipulated that there had been a listing with the Securities and Exchange Commission in 1936, prior to the date of a letter of October 10, 1938, last read (Tr. 462) [68]

(At this point the file of letters heretofore marked as Government Exhibit No. 16, for identification, were offered and received in evidence, and Mr. Cannon read from Exhibit "C" a letter dated September 22, 1938, addressed to the State Securities Commission, State Capitol, Salt Lake City, Utah, reading as follows:) (Tr. 468)

* * * * * * * * *

September 22, 1938

State Securities Commission
State Capitol
Salt Lake City, Utah

Attention: Mr. A. Ezra Gull

Dear Sir:

Confirming our recent conversation, I am submitting herewith a statement of the deal between the Union Associated Mines Company, (a Utah Corporation) and the Plymouth Oil Company.

The Union Associated Mines Company is a corporation of three million shares. There is approximately 740,000 shares issued and outstanding. The remainer is in the treasury of the Company. The Union Associated Mines Company has been dormant for the past 3½ years. The original promoter, Mr. S. A. Parry, having died at that time and nothing has been done with the Company since in the way of development.

The present deal is as follows:

In consideration of 635,000 shares of Treasury stock to be issued to the Plymouth Oil Company or his nominee, the Union Associated will received 50% of the gross production on that certain parcel of property and described as follows:

> Southeast one (1) acre of Block 13, Tract 15, City of Torrance, County of Los Angeles, State of California.

and 25% interest in the oil and gas leases on the property described as follows:

Parcel I

Lots 4 to 14 inclusive, Block 14, Lots 19, 20, 21, 26, 27 and 31 to 48 inclusive, Block 14, of the Factory Center Tract.

Parcel II

All lots in Block 11 of Factory Center Tract.

Parcel III

Lots 1 to 22 inclusive, Block 2, Lots 25 to 48 inclusive, Block 2, of the Factory Center Tract.

Parcel IV

Lots 3 to 22 inclusive, Block 7, Lots 27 to 46 inclusive, Block 7, of the Factory Center Tract.

Parcel V

Lots 6, 7 and 10 to 22 inclusive, Block 3, Lots 26, 27 and 30 to 35 inclusive, Block 3, Lots 37 to 40 inclusive, Block 3, and Lots 43 to 50 inclusive, Block 3, of the Factory Center Tract.

Parcel VI

Lots 1 to 14 inclusive, Block 4, Lots 19 to 32, inclusive, Block 5, Lots 8, 9 and 15 to 18 inclusive, Block 12, Lots 1, 2, 5, 6 and 11 to 16 inclusive, Block 13, Lots 25 to 34 inclusive, Block 13, of the Factory Center Tract.

Parcel VII

Lots 1 to 14 inclusive, Lots 19, 20 and 33 to 41 inclusive, Lots 48, 49, 50 and North 75 feet of Lots 26, 27, 28, 29, Block 6, Lots 42, 43, 24, 25, 21, 22 and 15 to 18 inclusive, Lots 44, 45, 46, 47, Block 6, of the Factory Center Tract.

Parcel VIII

Lots 3 to 22 inclusive, Lots 31 to 48 inclusive, Lots 23, 24, and one-quarter interest in Lots 25, 26, 27 and 28 in Block 10, of the Factory Center Tract.

Parcel IX

Lots 1 to 48 inclusive, Block 15, Factory Center Tract.

Parcel X

Lots 3 to 24 inclusive, Block 1, Lots 27 to 56 inclusive, Block 1, Lots 1 to 57 inclusive, Block 8, Lots 1 to 58 inclusive, Block 9, Lots 1 to 58, Block 16, of Factory Center Tract.

Parcel XI

Lots 9 and 10, Block 25 of Tract 1589, of Sheet #1 of Maps, as per book 21, pages 38 and 39 of Official Records of Los Angeles County.

A. Ezra Gull
8/22/38 Page

Parcel XII

Southeast one (1) acre of Block 13, Tract 15, City of Torrance, County of Los Angeles, State of California.

The old stockholders are not being assessed to develope these properties, but will participate on the benefits derived from the acquisition of the new properties.

The transaction has been worked out and consummated in the State of Utah as a single isolated transaction. The company is not asking to sell any stock other than the exchange of the above 635,000 shares for the propertys hereinabove described.

Trusting this sets forth the details requested by you, I am

Very truly yours,

JHM:BE

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibits Nos. 166, 166-a, 166-b. In the Matter of Union Ass'd Mines Co. Date 1/20/41. Witness Morgan. Smith & Hulse, Official Reporters. By Garnett.

(And Mr. Cannon further read from Exhibit 6 in evidence, the minutes of the Union Associated Mines, a letter dated September 28, 1938, from the State of Utah Securities Commission, Salt Lake City, reading as follows:) (Tr. 471)

[Crest] THE STATE OF UTAH
Securities Commission
Salt Lake City

A. Ezra Gull
Director
Heber Meeks
Secretary
Sept. 28, 1938

Judge J. H. Morgan,
Utah Oil Building,
Salt Lake City, Utah
Dear Judge Morgan:

Re: Union Associated Mines Co.
Plymouth Oil Company.

We acknowledge your letter of September 22nd, relative to subject companies.

After a careful analysis of the statements contained in your letter as to the proposed activities of the latter company, together with our conversation recently, it is the opinion of this Department that neither the Plymouth Oil Company nor Union Associated Mines Company, need register their securities in Utah, in order to exchange the block of stock set out, approximately 635,000 shares, for the properties which Union Associated Mines Company will receive.

Truly yours,

UTAH SECURITIES COMMISSION
A. Ezra Gull
Director

AEG:BG

(Mr. Cannon also read from Plaintiff's Exhibit 14, a letter dated October 13, 1938, addressed to J. H. Morgan, reading as follows:) (Tr. 472)

LOSCAL PETROLEUM COMPANY
612 Subway Terminal Building
Los Angeles, Calif.

October 13th, 1938.

J. H. Morgan
526 Utah Oil Bldg.
Salt Lake City, Utah.

Dear Judge.

Mr. Gordon has turned your letter of the 10th instant to the writer to answer as regards the data requested for Miss Dean. This Fred will have Miss Dean supply. Same will be mailed to the U. S. Land Office, Evanston, Wyoming.

Your thoughts as regards the Union Associated acquiring oil lands and leases under its own name is being taken under advisement by Gordon, Siens and the same will be discussed with you by *Atkission,* who plans on making a trip to Salt Lake very shortly. He is trying to have Fred join him in making the trip.

Fred arrived in Los Angeles safely, but acquired a very bad cold, his voice having left the body, but guess that a few days of the balmy sunny California weather will again find him in shape.

The Plymouth Oil has completed erecting the derrick on the Union Associated number one well in the Torrence field, and has application pending with the oil and gas division of the mining bureau for a drilling permit. This location will give the Union a sure oil well for their first venture, as the location was acquired by the writer

for the company. After the first well is completed, I look for easy going for the Union Associated and with you looking after the affairs of the company in Salt Lake and Gordon and his associates here we should have a very good dividen*t* paying company before very long.

I will have a photo of the derrick taken for your office showing the Union Associated number one well.

Will advise you within few days of additional activity of the Union.

Had letter from Vrang this morning written from Farmington, New Mexico and he asked how we were coming on the Union.

With best regards to yourself.

Sincerely yours,

Chris Schirm
Chris Schirm

[Endorsed]: Securities and Exchange Commission. Docket No. D515. Commission's Exhibit No. 123. In the Matter of Union Assoc. Date 11/25/40. Witness Schirm. Electreporter, Inc., Official Reporters. By Harvey.

[69]

By stipulation, copies of the following documents were offered and received in evidence, with exhibit numbers as indicated:

Plaintiff's Exhibit No. 22, contract between Plymouth Oil Company and Union Associated Mines Company, dated September 21, 1938, signed by Plymouth Oil Company, Incorporated, by Sidney Fischgrund, vice-president, and Guy B. Davis, secretary and treasurer, first party; and Union Associated Mines Company, Incorporated, by John Clayton and by J. H. Morgan, second party.

[PLAINTIFF'S EXHIBIT NO. 22]

AGREEMENT

This Agreement, Made and entered into this 21 day of September, 1938, by and between the Plymouth Oil Company, a California Corporation, hereinafter designated First Party, and the Union Associated Mines Company, a Utah Corporation, hereinafter designated Second Party.

Witnesseth:

Whereas, First Party has acquired oil and gas leases on certain property in Los Angeles County, more particularly set forth in the Description of Property marked Exhibit "A", and by this reference made a part hereof;

Whereas, Second Party desires to acquire an interest in the oil and gas leases owned by the First Party and desires to share in the production of oil and petroleum products that may be obtained from said property;

Now, Therefore, for and in consideration of the premises and of the mutual covenants and agreements of the parties hereto, and other good and valuable considerations, receipt whereof is hereby acknowledged, First Party hereby assigns, conveys and transfers to the Second Party a one-half (½) or fifty (50%) per cent of the gross production from that certain oil and gas lease and agreement acquired by the First Party on that certain parcel of property more particularly set forth as Parcel XII in the description marked Exhibit "A", and by this reference made a part hereof, and First Party hereby assigns, conveys and transfers to the Second Party, a one-fourth (¼) or twenty-five (25%) per cent of its interest in those certain oil and gas leases and agreements acquired by First Party

(Plaintiff's Exhibit No. 22)

on those certain parcels of property, more particularly set forth as Parcels I to XI inclusive in the description marked Exhibit "A", and by this reference made a part hereof, upon the following terms, covenants, conditions and provisions:

(1) First Party agrees to drill an oil well in what is known as the Torrance Oil Field in the County of Los Angeles, State of California, or on the property set forth as Parcel XII of the description marked Exhibit "A", which said real property is in the said Torrance Oil Field in the County of Los Angeles, State of California, and agrees to complete an oil well to the producing or oil bearing sands, or to a depth of approximately five thousand (5000) feet.

(2) First Party agrees that the costs, expenses and disbursements for drilling the oil well in said Torrance Oil Field shall be assumed, paid and incurred entirely by said First Party, and the Second Party shall be under no obligation to repay or reimburse the First Party for the costs, expenses and disbursements made for drilling said well.

(3) The First Party, and its employees, agents and contractors, will be in complete charge of drilling operations on said property, and the sale of oil from said well.

(4) That as consideration for the assignment, conveyance and transfer by First Party to Second Party of one-half (½) or fifty (50%) per cent of the gross produc-

(Plaintiff's Exhibit No. 22)

tion obtained from the property herein described as Parcel XII, and of a one-fourth (¼) or twenty-five (25%) per cent of its interest in the oil and gas leases on the property herein described as Parcels I to XI inclusive, and as consideration for the agreement on the part of First Party to drill an oil well in the Torrance Field or on said Parcel XII herein described, Second Party transfers, conveys, sells, assigns, indorses and delivers unto First Party, six hundred thirty-five thousand ($635,000) shares of its capital stock.

(5) It is understood that this agreement between the parties hereto is subject to all of the terms, conditions, provisions, obligations, payments, royalties, rights and duties that are to be performed and as are contained in the oil and gas leases, agreements and assignments under and by virtue of which the First Party has acquired said oil and gas leases.

(6) First Party agrees to commence drilling operations in the Torrance Field or on Parcel XII of the herein described property within thirty (30) days from and after the date this agreement is signed, executed and delivered by the parties hereto and agrees to continue drilling operations with due diligence and efficiency until a depth of five thousand (5000) feet has been reached, unless petroleum is discovered in paying quantities at a lesser depth: however, it is understood that First Party makes no warranty, representation or guarantee that oil or petroleum products can or will be produced, it being understood that

(Plaintiff's Exhibit No. 22)

the drilling of an oil well is speculative and that no part of this agreement is contingent upon the actual production of oil or petroleum products by the First Party.

(7) First Party shall be under no obligation to the Second Party, as a result of this agreement to drill oil wells on any of the other parcels of property herein described.

(8) It is expressly understood that all of the terms, covenants, provisions and conditions herein contained and which are contained in the oil and gas leases and agreemets herein referred to are of the essense of this agreement and shall be binding upon and inure to the benefit of all the successors, and assigns of the parties hereto.

In Witness Whereof, the parties hereto have hereunto affixed their hands and seals on the day and year first above written.

PLYMOUTH OIL COMPANY,
a Corporation,
By Sidney Fischgrund
(Seal) Vice-President
By Guy W Davis
Secretary and Treasurer
First Party.

UNION ASSOCIATED MINES COMPANY,
a Corporation
By John Clayton
By J H Morgan
(Seal) Second Party.

(Plaintiff's Exhibit No. 22)

EXHIBIT "A"

DESCRIPTION OF PROPERTY

Parcel I

Lots 4 to 14 inclusive, Block 14, Lots 19, 20, 21, 26, 27 and 31 to 48 inclusive, Block 14, of the Factory Center Tract.

Parcel II

All lots in Block 11, of Factory Center Tract.

Parcel III

Lots 1 to 22 inclusive, Block 2, Lots 25 to 48 inclusive, Block 2, of the Factory Center Tract.

Parcel IV

Lots 3 to 22 inclusive, Block 7, Lots 27 to 46 inclusive, Block 7, of the Factory Center Tract.

Parcel V

Lots 6, 7 and 10 to 22 inclusive, Block 3, Lots 26, 27 and 30 to 35 inclusive, Block 3, Lots 37 to 40 inclusive, Block 3, and Lots 43 to 50 inclusive, Block 3, of the Factory Center Tract.

Parcel VI

Lots 1 to 14 inclusive, Block 4, Lots 19 to 32 inclusive, Block 5, Lots 8, 9 and 15 to 18 inclusive, Block 12, Lots 1, 2, 5, 6 and 11 to 16 inclusive, Block 13, Lots 25 to 34 inclusive, Block 13, of the Factory Center Tract.

Parcel VII

Lots 1 to 14 inclusive, Lots 19, 20 and 33 to 41 inclusive, Lots 48, 49, 50 and North 75 feet of Lots 26, 27, 28, 29, Block 6, Lots 42, 43, 24, 25, 21, 22 and 15 to 18 inclusive, Lots 44, 45, 46, 47 Block 6 of the Factory Center Tract.

(Plaintiff's Exhibit No. 22)

Parcel VIII

Lots 3 to 22 inclusive, Lots 31 to 48 inclusive, Lots 23, 24, and one-quarter interest in Lots 25, 26, 27 and 28 in Block 10, of the Factory Center Tract.

Parcel IX

Lots 1 to 48 inclusive, Block 15, Factory Center Tract.

Parcel X

Lots 3 to 24 inclusive, Block 1, Lots 27 to 56 inclusive, Block 1, Lots 1 to 57 inclusive, Block 8, Lots 1 to 58 inclusive, Block 9, Lots 1 to 58, Block 16, of Factory Center Tract.

Parcel XI

Lots 9 and 10, Block 25 of Tract 1589, of Sheet #1 of Maps, as per book 21, pages 38 and 39 of Official Records of Los Angeles County.

Parcel XII

Southeast one (1) acre of Block 13, Tract 15, City of Torrance, County of Los Angeles, State of California.

[Endorsed]: Securities and Exchange Commission. Docket No. D-515. Commission's Exhibits Nos. 133, 133-A, 133-B, 133-C, 133-D, 133-E. In the Matter of Union Associated Mines. Date 12-17-40. Witness Fischgrund. Electreporter, Inc., Official Reporters; by Morris.

[Endorsed]: Case No. 15229. U. S. vs. Collins et al. Pltfs. Exhibit No. 22 in Evidence. Date Jul. 12, 1944. Clerk, U. S. District Court, Sou. Dist. of Calif. E. N. Frankenberger, Deputy Clerk.

Plaintiff's Exhibit No. 23, contract and addenda between Plymouth Oil Company and Union Associated Mines Company, dated January 5, 1939, signed by Plymouth Oil Company, Incorporated, by Sidney Fischgrund, vice-president, and Guy B. Davis, secretary and treasurer, first party; and Union Associated Mines Company, Incorporated, by R. R. Bray and J. H. Morgan, officers for the second party.

[PLAINTIFF'S EXHIBIT NO. 23]

AGREEMENT

This Agreement, Made and entered into this 5th day of January, 1939, by and between the Plymouth Oil Company, a California corporation, hereinafter designated First Party, and the Union Associated Mines Company, a Utah corporation, hereinafter designated Second Party.

Witnesseth:

Whereas, First Party has erected an oil well derrick and proposes to drill an oil well on certain property in the City of Torrance, County of Los Angeles, State of California, more particularly described as Lot 23, Tract 437, under and pursuant to a certain oil and gas lease executed by the owners of the above described property as Lessor, and the Plymouth Oil Company as Lessee;

Whereas, Second Party desires to acquire an interest and share in the production of the oil and petroleum products that may be obtained from said property;

Now, Therefore, for and in consideration of the premises and the mutual covenants of the parties hereto, and other goods and valuable consideration, receipt whereof is hereby acknowledged, First Party hereby assigns unto Second Party, one-half of its right, title and interest in

(Plaintiff's Exhibit No. 23)

and to that certain oil and gas lease on the property described as Lot 23, Tract 437, City of Torrance, County of Los Angeles, State of California, which said one-half interest more particularly equals forty (40%) per cent of the gross production obtained from the said property, and as consideration therefor, Second Party hereby transfers, conveys, sells, assigns, endorses and delivers unto First Party six hundred thirty-five thousand (635,000) shares of its capital stock, upon the following terms, covenants, conditions and provisions:

(1) First Party agrees to drill an oil well on the hereinabove described property in the City of Torrance, County of Los Angeles, State of California, and agrees to complete the well to the producing or oil bearing sands or to a depth of fifty-one hundred (5100) feet.

(2) It is understood that First Party's interest in and to the oil produced from the above described land is a four-fifths (4/5) royalty or eighty (80%) per cent interest, and by this agreement one-half (½) of said royalty or interest is assigned over and unto Second Party, so that each party hereto will share equally in the production obtained from said property after the landowners receive the twenty (20%) per cent royalty provided in said oil and gas lease; however, it is understood and agreed that the forty (40%) per cent royalty so assigned to Second Party is not due or payable and is not to be paid until after all costs and expenses of drilling said oil well and all expenses incidental thereto, including costs of equipment, machinery, material and salaries have been paid from the four-fifths (4/5) royalty or eighty (80%) per cent of the first production obtained and received from said well. It is understood and agreed that the cost of

(Plaintiff's Exhibit No. 23)

said oil well is not to exceed Thirty Seven Thousand, Five Hundred ($37,500.00) Dollars, and in the event the costs exceed said amount such excess shall be paid by the First Party.

(3) First Party, its employees, agents and contractors will be in complete charge of drilling operations on said property, and the sale of oil from said well.

(4) It is understood that this agreement is subject to all of the terms, conditions, provisions, obligations, payments, royalties, rights and duties that are to be performed, and the conditions imposed upon the First Party, as are more particularly contained in the oil and gas lease, option and agreement under and by virtue of which Second Party is to drill said oil well on said property.

(5) First Party has already erected a derrick on the hereinabove described property and agrees to commence drilling operations within thirty (30) days from the date this agreement is signed, executed and delivered by the parties hereto and agrees to continue drilling operations with due diligence and efficiency until a depth of fifty-one hundred (5100) feet has been reached, unless oil is discovered in paying quantities at a lesser depth; however, it is understood that First Party makes no warranty, representation or guarantee that oil or petroleum products will be produced, since the production of oil is speculative and therefore, this agreement is not contingent upon the actual production of oil or petroleum products by First Party.

(6) First Party will be under no obligation to drill more than one oil well on the herein described property.

(Plaintiff's Exhibit No. 23)

(7) That as consideration for the execution of this agreement by First Party, Second Party does hereby and herewith convey, sell, assign, endorse and deliver unto First Party six hundred thirty-five thousand (635,000) shares of its capital stock,

(8) It is expressly understood that all of the terms, covenants, provisions and conditions herein contained, and which are contained in the oil and gas lease and option agreement herein referred to are of the essence of this agreement and shall be binding upon and inure to the benefit of all the successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have hereunto affixed their hands and seals on the day and year first above written.

PLYMOUTH OIL COMPANY,
a Corporation
By Sidney Fischgrund
(Seal) Vice-President
By Guy W. Davis
Secretary-Treasurer
First Party

UNION ASSOCIATED MINES COMPANY,
a Corporation
By R. R. Bray
By J. H. Morgan
(Seal) Secy
Second Party

(Plaintiff's Exhibit No. 23)

ADDENDA

Whereas, an agreement has been entered into by and between Plymouth Oil Company, a California corporation, designated First Party, and Union Associated Mines Company, a Utah corporation, designated Second Party, which said agreement is dated January 5th, 1939;

And, Whereas, it is the intention of the parties to amend and supplement said agreement;

Now, Therefore, they do hereby amend and supplement said agreement to provide as follows, to-wit:

7-A. It is expressly understood and agreed by and between the parties hereto that the 635,000 shares of the capital stock of the Union Associated Mines Company sold, assigned and transferred to the Plymouth Oil Company shall be delivered to the said Plymouth Oil Company in seven installments when the work done on the drilling of Plymouth Oil Company-Union Associated Mines Company Well #2 progresses as follows:

100,000 shares upon completion of derrick;

100,000 shares when oil well is spudded in;

100,000 shares when well is drilled to a depth of 1000 feet;

100,000 shares when well is drilled to a depth of 2000 feet;

100,000 shares when well is drilled to a depth of 3000 feet;

100,000 shares when well is drilled to a depth of 4000 feet;

35,000 shares when well is drilled to a depth of 5000 feet.

(Plaintiff's Exhibit No. 23)

7-B. It is further understood and agreed by and between the parties hereto that the 635,000 shares of capital stock of the Union Associated Mines Company is to be delivered under the terms of this agreement and shall be ex-dividend #1, and that the delivery of said stock shall be subject to arrangements to be made for the delivery of the first dividend on or before March 25th, 1939.

Approved

PLYMOUTH OIL COMPANY

By.....

By.....

First Party

Approved

UNION ASSOCIATED MINES COMPANY

By.....

By.....

Second Party

Salt Lake City, Utah
September 3, 1938

Received of Walker Bank & Trust Company one hundred seventy thousand shares of Union Associated Mines Company stock as follows:

Certificate No.	No. Shares
3177	1000
3164	1000
916	1000
3167	1000

(Plaintiff's Exhibit No. 23)

2290	5800
2301	10,000
173	41,119
2302	2760
2305	3000
3172	10,000
3163	11,000
2304	7500
2303	7500
2330	20,000
3178	1000
3170	14,664
3169	10,000
3175	3000
3171	18,690
	170,033

J. H. Morgan

[Endorsed]: Securities and Exchange Commission. Docket No. D-515. Commission's Exhibits Nos. 132, 132-A, 132-B, 132-C. In the Matter of Union Associated Mines. Date 12-17-40. Witness Fischgrund. Electreporter, Inc., Official Reporters; by Morris.

[Endorsed]: Case No. 15229. U. S. vs. Collins et al. Pltfs. Exhibit No. 23 in Evidence. Date Jul. 12, 1944. Clerk, U. S. District Court, Sou. Dist. of Calif. E. N. Frankenberger, Deputy Clerk.

(Tr. 476)

Plaintiff's Exhibit No. 24, a copy of an oil and gas lease, dated December 29, 1938, executed by F. V. Gordon and Mary L. Gordon, lessors, and William S. Millener, of Alpine Tavern, Alpine, California, lessee.

[PLAINTIFF'S EXHIBIT NO. 24]

OIL AND GAS LEASE

Parties

This Lease, dated December 29, 1938, executed by F. V. Gordon and Mary L. Gordon, husband and wife, Rhetta Worthing Warsap and Leo Harry Warsap, her husband, (the interest of Rhetta Worthing Warsap, however, being her *sold* and separate property) George W. Jones and Gladys Z. Jones, husband and wife, and Artie M. Chapin, a widow, first parties, herein called lessors, and William S. Millener of Alpine Tavern, Alpine California, second party, herein called lessee,

Witnesseth:

Consideration

1. In consideration of the agreements hereinafter contained, and for other valuable consideration, the lessors lease and demise to the lessee the sole and exclusive right of drilling for, developing and removing petroleum, gas and other hydrocarbon substances in or on that certain land located in the County of Kern, State of California, and described as follows, to-wit:

The land

Northeast ¼ of the Northwest ¼ Section 2.
Township 25 South Range 18 East M. D. B. & M.

(Plaintiff's Exhibit No. 24)

Roads, etc.

with the right to construct and maintain thereon the necessary roads, (which will not exceed fifteen feet in width,) rights of way for pipe lines for oil, gas and water, the buildings machinery, equipment, telephone lines and telegraph lines necessary for carrying on said business of extracting and producing any of said products, and the right to use without charge, for lessee's operations on said land, all water developed by the lessee.

Surface rights

2. Lessors reserve the right to continue the use of the surface of said land for agricultural purposes and maintain any dwelling house or other buildings thereon in so far as such use or occupancy will not materially interfere with lessee's rights and operations hereunder, and lessee in its operations shall interfere as little as practicable with such use by lessors. This lease is made subject to a surface lease for grazing of livestock including the use of the irrigation ditches, and to any renewals or extensions of said lease.

Term—20 years etc.

3. The term of this lease shall be twenty (20) years from date hereof, and as long thereafter as oil, gas or other hydrocarbons are produced in paying quantities thereon, unless sooner terminated as hereinafter provided.

Drilling

4. The *frilling* requirements for this lease shall be as follows:

(Plaintiff's Exhibit No. 24)

First well

(a) On or before three (3) years, lessee must commence drilling operations on said land, and must diligently prosecute the same without interruption, unless delay is excused as hereinafter provided, to a depth of 5000 feet, unless oil and/or gas is found in paying quantities at a lesser depth, or, in lessee's judgment, further drilling becomes unprofitable.

Abandonment

(b) Should further drilling of a hole drilled hereunder become impossible by reason of accident, or unprofitable in the judgment of the lessee, that hole may be abandoned.

Further wells

(c) Within ninety (90) days of the completion or abandonment as aforesaid, lessee must commence drilling operations for a new well and prosecute the same to completion or abandonment in the same manner provided herein for the first well, and so on with each succeeding well, until there shall have been drilled on said land the equivalent of one producing well to each (10) acres thereof. Lessee may drill thereon as many more wells as lessee may elect, but no new well shall be drilled by lessee after twenty (20) years from date hereof.

(Plaintiff's Exhibit No. 24)

Surrender and Cancellation

(d) Lessee may surrender this lease before or after the commencement of drilling without liability for failure to commence or continue operations and upon such surrender lesse shall promptly record its quitclaim deed for said premises and pay to lessors the sum of five dollars ($5.00) Cancellation and termination of lease shall be the only remedy for failure to commence or continue operations.

Offset—one-half mile

(e) Should oil be discovered in paying quantities (for the purpose of this paragraph deemed to be one hundred fifty barrels per day on an average for a thirty day test) within one-half mile from the leased premises, then lessee shall within sixty (60) days after said (30) day test period commence drilling operations upon the land hereby leased and prosecute the same as hereinafter provided.

Offset wells

(f) Within ninety (90) days after a producing well not already offset on lessors' premises is placed upon production within three hundred (300) feet of the leased premises, lessee shall commence drilling operations for an offset well on the leased land and diligently prosecute the drilling thereof in the manner above provided for

(Plaintiff's Exhibit No. 24)

the first well; but this shall not obligate lessee to operate more than one string of tools at any one time; and if the time for commencement of an offset well should occur while lessee is drilling elsewhere on said land, lessee shall commence the drilling of said offset well within thirty (30) days after the completion of such other well.

Surrender and retaining of producing wells

5. Lessee shall have the right at any time to retain any well or wells drilled hereunder, together with three (3) acres surrounding each such well, in the form of a square, as nearly as possible, with the well in the center thereof, subject to the provisions of this lease, upon surrendering the remainder of such land and executing and recording to lessors a quitclaim deed for the land so surrendered. Lessors will not drill or cause or permit to be drilled upon land so surrendered within one hundred fifty (150) feet of any such well retained by lessee.

Comply with laws.

6. Lessee will comply with all laws of the state of California and regulations thereunder in lessee's drilling upon said land; and lessee shall have the right, but shall not be obligated so to do, to enter into conservation or curtailment agreements with other operators for the purpose of preventing waste or for the conservation of oil and gas when such agreements are required or permitted

(Plaintiff's Exhibit No. 24)

by state or federal statutes or officials; provided, however, that lessee shall not curtail any of the wells drilled upon the leased premises unless all offsetting operators likewise curtail and such curtailment shall be at no greater pro rate percentage per well than the curtailment effective as to said offset wells of operators on properties adjoining the leased premises.

Bury pipe lines
Sumps and ditches, etc.

7. Lessee will bury all pipe lines eighteen (18) inches where same cross cultivated lands, when requested so to do. Upon abandonment of any well, the well and all damage from sumps and ditches will be repaired by lessee within sixty (60) days or an appropriate cash damage paid. Like repairs will be made upon expiration or termination of this lease, or an appropriate cash damage paid.

"Paying Quantities"

8. As used herein with reference to drilling operations, the term "paying quantities" means that quantity and of such quality that an ordinarily prudent person, experienced in the business of oil, or oil and gas production, considering all the surrounding conditions, would expect a reasonable profit above the entire cost of drilling, equipping and operation the producing well or wells completed. As used herein with reference to lessee's right to retain and operate a completed well, the term "paying quantities" means oil, or oil and gas together, in such

(Plaintiff's Exhibit No. 24)

quantity and of such quality as will pay lessee a small profit over the cost of operating the well, although the cost of drilling and equipping the well never may be paid. Where the term "paying quantities" has been used above with reference to discovery upon land within one-half mile of the leased premises, the parties have agreed that one hundred fifty (150) barrels shall be a discovery of oil in paying quantities and such provision shall control the definitions contained in this paragraph.

Operating wells

9. Producing wells are to be operated by lessee at lessee's own expense as long as such producing wells produce in paying quantities as above defined unless operation is excused as herein elsewhere provided.

Free oil and gas.
Water

10. Lessee shall not be required to pay royalty on oil or gas produced and used by lessee on said premises for operations hereunder, but may use such oil or gas free of charge. If and while the same is not required by lessee, lessors may use without charge gas produced from said land for lessors' domestic use on the land, at lessors' risk. No charge will be made to lessee for water developed by lessee on this land, and used hereon for its necessary operations on this land.

Royalty

11. Other than the oil and gas specified in paragraph 10 hereof, lessors reserve the following as part of the consideration for this contract and as royalty:

(Plaintiff's Exhibit No. 24)

Oil in kind or money.

(a) One-sixth (1/6th) of all oil produced and saved from said premises by lessee, which lessors shall receive, in money or in kind at lessors' option, as hereinafter provided. Royalty in kind shall be delivered in tanks maintained on the property for that purpose by lessee, and shall be stored for not exceeding thirty (30) days, at lessors' risk. If the royalty is paid in money, then lessee shall pay lessors one-sixth (1/6th) of the posted market price at the well of all such oil at time of production, less actual cost of cleaning, treating and for degydrating, if any, not exceeding five cents (5¢) per barrel of net clean oil, cutting 50% or less, and seven and one-half cents (7½¢) per barrel for oil cutting over 50%. The option of lessors' to take royalty in money or in kind shall be only exercised once every ninety (90) days and then on ten (10) days notice in writing to lessee; if no notice is given, royalties are payable in money.

"Market price", testing, etc.

(b) Royalty in oil, when payable in cash, shall be based on the net quantity after deduction for water and other foreign substances, as determined by a reasonably accurate test, and on gravity of the oil as determined by such test, save that where the oil contains in excess of 3%

(Plaintiff's Exhibit No. 24)

water or other foreign substances the gravity shall be corrected to 3% cut. In the absence of a posted price in the field lessee shall monthly make to lessors a written offer of lessors' royalty share of oil production during the calendar month, which shall not be less than the price currently offered by lessee to other lessors' or to producers for oil of like quality and gravity in the same field and lessors shall have the option to accept or reject such offer within five (5) days thereafter. Unless written rejection is delivered to lessee within said period said offer shall for all purposes be deemed accepted. If rejected, then lessee shall store lessors' royalty oil in lessee's storage tanks, at lessors' risk for not to exceed thirty (30) days from the date of such written rejection.

Gas

(c) For all gas produced, saved and sold from the leased land and casinghead gasoline extracted therefrom, lessors' royalty shall be one-sixth (1/6th) as hereinafter specified; but, excepting as expressly provided in this lease, lessee is not required to produce, sell or otherwise dispose of gas.

Casinghead gasoline

(d) While the natural gas from said land is being processed for the recovery of gasoline therefrom in a plant now owned, operated or controlled by

(Plaintiff's Exhibit No. 24)

lessee, the royalty on account of such natural gas, the gasoline extracted therefrom, and the residual dry gas remaining after such extraction shall be based on the amount of money received by lessee from the owner or operator of such plant as consideration for said gas or the privilege of treating the same. If the consideration received from such third party shall consist in whole or in part of a share of the gasoline or residual dry gas resulting from such processing, the royalty, except as hereinafter provided, shall be based on the value (as hereinafter defined) of the products so received. If the contract or other arrangement of processing of such dry gas by such third party shall provide for a payment to be made to such third party as a charge for such processing, said payment shall be deducted from the proceeds or value of the products received from it as the result of such processing, the amount of such charge plus any additional costs incurred by lessee in accepting delivery at the plant or lease of the gasoline from such third party (excluding cost of pipeline or other equipment), and the royalty shall be computed on the amount remaining after such deduction. While the natural gas from said premises is being processed by lessee in a plant owned, operated or controlled by lessee there shall be deducted from the value of all gasoline extracted and saved from such natural gas sixty-five percent, (65%) of such value to compensate lessee for such processing and the remainder of such value,

(Plaintiff's Exhibit No. 24)

plus the value of the residual dry gas as hereinafter defined, shall be the sum upon which royalty shall be computed.

Value of gasoline

(e) Whenever under this lease the value of gasoline enters into the computation of royalties, the royalties shall be computed upon the price received by lessee from the sale of gasoline extracted, saved and sold by lessee from said gas at plant or lease. Lessee shall have the right to sell and make contracts from future sales and deliveries of any and all gasoline extracted and saved by it from said gas, and if it does so sell or contract for sale of all or part thereof, the average price received by lessee at plant or lease for such gasoline during any month shall be the price for the basis of settlement hereunder for gasoline extracted, saved and sold during that month. At lessee's option, lessee may purchase all or any part of said manufactured gasoline, in which event lessee shall pay lessors the royalty percentage required by this lease at the average market value per gallon at the plant or lease during the respective calendar month.

Accounting for dry gas

(f) Whenever and after the gas taken hereunder by lessee has been treated for the extraction of gasoline, lessee shall have the right to use free

(Plaintiff's Exhibit No. 24)

of charge a fair proportionate quantity of the resultant dry gas as may be needed in the proper operation of its plant or plants wherein said gas is treated, but the total quantity of gas so used by lessee, together with losses and shrinkage due to extraction of gasoline, shall be deducted from the gas taken by lessee from all parties in direct proportion of the respective amounts taken from each and treated in said plant or plants. Such dry gas shall be deducted before pro rating the dry gas sold as hereinafter provided.

Dry gas, ctd.

(g) Whenever the value of residual dry gas enters into the computation of royalties under this lease such value shall be computed at a rate per thousand cubic feet at which residual dry gas is sold by lessee at the plant at which the said gas from said leased premises is processed, during the month involved in the settlement. No royalty shall be paid on account of any residual dry gas returned to said leased premises and used by lessee in a necessary and economical manner in its operations or lost or wasted to air.

No other charges

(h) No charge shall be made against or deduction made from, or royalties paid for, cost of extracting gasoline or dehydrating or treating oil except as herein provided.

(Plaintiff's Exhibit No. 24)

Books, records, logs

(i) The royalty in money as aforesaid shall be ascertained, computed and paid monthly, and for this purpose lessee shall keep true and correct books of account showing the production of said substances from said premises, which records shall be open to inspection of lessors at all reasonable times. Lessee shall furnish to lessors monthly written statements of the production of said premises for the preceding calendar month; settlement thereof shall be made between the parties hereto on the twentieth (20th) day of each calendar month. Lessors shall have the right to examine at all reasonable times the land hereby leased, work in progress and done thereon, and production therefrom, equipment on said land and logs of all wells drilled by lessee on said land.

New or deep zone
Drill or surrender

12. In event that, after lessee has complied with its drilling requirements hereunder, oil and gas should be discovered in paying quantities within three hundred (300) feet of any boundary of the leased land, and such discovery should be from a separate and different zone or sand from which lessee then is producing from on the land hereby leased, lessee shall, within ninety (90) days after a thirty (30) day production test upon said well, commence and continue drilling operations in a bona fide

(Plaintiff's Exhibit No. 24)

effort to produce from said separate and different zone, and permitting a period of ninety (90) days between the completion of one such well and the drilling of another, lessee shall drill and complete one well to each twenty (20) acres if the gravity of the oil produced is thirty-four gravity or higher; otherwise one well to ten (10) acres. In lieu of drilling new wells to said new zone lessee shall have the right to deepen any well drilled upon the leased premises, providing the same is not producing or capable of producing oil in paying quantities as herein defined. Lessee shall have the same right to abandon any such well should further drilling thereof prove unprofitable or because of mechanical difficulties, in which event lessee shall comence a new well in lieu of such abandoned well within a period of ninety (90) days from the date of cessation of work upon such well. Should lessee fail to commence drilling operations for said deep or new well within the time provided in this paragraph, lessee shall forfeit its right to develop such new zone or sand and will quitclaim and surrender to lessors such portion of said lease as lessors or their subsequent lessees may require to properly develop said sand zone. In this event the parties hereto will have reciprocal rights of way and easements over the property of the other for convenience and operations, and each will interfere as little as possible with the operation of the other.

Strikes, etc.

13. Lessee's drilling, producing and other operations hereunder may be suspended if and while compliance is prevented by the elements, accidents, strikes, lockouts, riots, delays, in transportation, inability to secure mate-

(Plaintiff's Exhibit No. 24)

rials in the open market, interference by governmental action, or by *an* other cause, whether similar to the foregoing or not, beyond control of lessee. Drilling and producing operations for oil, or oil and gas together, may be suspended if and while the price offered to or obtainable by producers generally in the same field to less than sixty cents (60) per barrel at the well, excepting when wells being offset or already offset are producing.

Taxes

14. The lessee shall pay before delinquent all taxes levied against the structures, equipment and other personal property placed, maintained or used by lessee on or in the leased land, and shall pay any increase in taxes assessed against the leased land, whether upon the land or upon the mineral rights; lessee shall pay before delinquent all other taxes assessed against lessors' interest in the leased land and any local improvement or street assessments. Any *addition* taxes, assessments or charges levied or assessed by governmental authority other than or in addition to those now in existence, on account of production from said property of any of the substances herein specified, shall be borne by lessee. Lessors may pay the entire amount of any tax or assessment which is a lien against the leased land or improvements thereon or therein and shall be entitled to reimbursement from the lessee, with interest at seven per cent, (7%) per annum from the date of demand for such reimbursement.

(Plaintiff's Exhibit No. 24)

Non-
responsibility

15. All work done by lessee hereunder shall be at lessee's sole cost, and lessee shall protect said land and lessors from claims of laborers, materialmen and contractors, Lessors may post and maintain customary notices of non-responsibility for material and labor furnished for lessee's operations.

Right to move
machinery

16. Lessee shall have the right to remove from said land during the life of this lease and at any time within three (3) months after expiration or sooner termination thereof all derricks, machinery, rigs, pumping stations, and all property and improvements belonging to or furnished by the lessee except casing which shall remain in the holes at the option of lessors to be exercised *with* thirty (30) day after the expiration or termination of this lease.

Termination

17. Time is of the essence of this lease. After thirty (30) days notice in writing from lessors to lessee to remedy any breach of this lease, specifying the nature thereof, and upon failure by lessee then to remedy such breach, lessors may terminate this lease without further notice; provided, only ten (10) days notice shall be required for failure to pay rent or royalty; and provided no such notice shall be required to terminate for breach of lessee's obligation relating to commencement of drilling operations for first well; and provided, the right to operate, repair, redrill, deepen and recomplete any well can

(Plaintiff's Exhibit No. 24)

only be terminated by breach of some requirement directly relating to, connected with or arising from the operation of such well, and failure to pay royalty on account of that well shall be breach of such requirement.

Should lessee default during the course of drilling its first well and this lease be terminated on account thereof, or should lessee voluntarily surrender or quitclaim this lease before discovery of oil in paying quantities, lessors shall have the right, notwithstanding anything herein to the contrary, to use all of lessee's equipment for the purpose of completing said well for a period of ninety (90) days without charge, after which time lessee shall have the right to remove the same.

Notices—
how given

Notices to lessee under this or any provision hereof may be given by personal service in writing, or by depositing written notice in United States registered mail, in California, postage prepaid, addressed to lessee at/or such address of which lessee may notify lessors.

Notice to lessors under this lease may be given by personal service in writing, or by depositing written notice in United States registered mail, in California, postage prepaid, addressed to

F. V. Gordon and Mary L. Gordon
612 Subway Terminal Building

Rhetta Worthing Warsap and Leo Harry Warsap,
756 South Spring Street,

George W. Jones and Gladys Z. Jones
Room 1115, 412 W. Sixth St.,

(Plaintiff's Exhibit No. 24)

and

Artie M. Chapin
555 No. Rossmore,

all in the city of Los Angeles, or at such other address of which lessors may notify lessee.

Time of notice shall run from time of such personal service or deposit, as case may be.

Warranty of title

18. Lessors covenant that they are the owners of said land free and clear of all encumbrances, except liens, charges and mortgages of record, and warrant to the lessee peaceable possession during the life of this lease, Lessors consent to the subordination to this lease of any mortgage or lien now upon the said land. Lessee, at lessee's option, may pay or discharge any taxes, mortgages, trust deeds, contracts or liens now upon the property, levied or assessed on or against said real property, now or hereafter, and, in event of exercise of said option, lessee shall be subrogated to the rights of any holder or holders thereof, and may reimburse itself by applying to discharge thereof any royalties or rents accruing hereunder.

Quitclaim deed

19. Upon expiration or sooner termination of this lease lessee will deliver to lessors a good and sufficient quitclaim deed for the land hereby leased and then retained by lessee.

(Plaintiff's Exhibit No. 24)

Where cash payments are to be made

20. The land hereby leased is *wo*ned in accordance with the following sched*ue*l, and all payments of rental, cash royalty or other money to be paid lessors hereunder shall be deposited to the credit of said lessors at the Citizens National Trust & Savings Bank, 736 South Hill Street, Los Angeles. California, and lessors shall give said bank appropriate instructions for division of such income as follows:

4/12ths to F. V. Gordon and Mary L. Gordon;
3/12ths to Rhetta Worthing Warsap;
4/12ths to Artie M. Chapin; and
1/12th to George W. Jones and Gladys Z. Jones

21. Lessors agree that upon the payment of $2500.00 at any time on or before three (3) years from date hereof, the drilling time as provided in Paragraph A. Article 4 above, may be extended an additional two (2) years.

Heirs, etc.

22. This lease shall bind and inure to the benefit of the parties hereto, their heirs, successors in interest and assigns, respectively, subject to restraint upon assignment and subletting as provided in the previous paragraph.

Marginal

23. The notations appearing at the left margin of this lease are for convenience only in referring to the lease, and form no part hereof.

(Plaintiff's Exhibit No. 24)

Executed in quadruplicate.

LEO HARRY WARSAP (Signed)
GEORGE W. JONES (Signed)
GLADYS Z. JONES (Signed)
F. V. GORDON (Signed)
MARY L. GORDON (Signed)

.....

Rhetta Worthing Warsap
ARTIE M. CHAPIN (Signed)
Lessors
WILLIAM S. MILLENER (Signed)
Lessee

[Endorsed]: Securities and Exchange Commission. Docket No. D-515. Commission's Exhibits Nos. 135, 135-A, 135-B, 135-C, 135-D, 135-E, 135-F. In the Matter of Union Associated Mines. Date 12-18-40. Witness Fischgrund. Electreporter, Inc., Official Reporters; by Zellnner.

[Endorsed]: Case No. 15229. U. S. vs. Collins et al. Pltfs. Exhibit No. 24 in Evidence. Date Jul. 12, 1944. Clerk, U. S. District Court, Sou. Dist. of Calif. E. N. Frankenberger, Deputy Clerk.

(Tr. 477)

Mr. Cannon: I think we can stipulate, can we not. that copies of Exhibits 22—that is, the original contract between Plymouth and Union on No. 1 well, and also Exhibit 23, the contract between those same companies as to the No. 2 well, as well as the last document you have

just shown us, Exhibit 25, the lease from Millener to Union, were all part of the registration statement (Government's Exhibit No. 7), were they not?

Mr. Manster: Yes, that is true. (Tr. 480) [70]

(By stipulation except for the reservations hereafter mentioned, Plaintiff's Exhibit No. 25, an agreement dated January 17, 1939, between E. B. Siens and James H. Collins, was offered and received in evidence.)

Mr. Blue: Reserving, however, to the other defendants than Collins an objection on the ground that—we have no objection as to the foundation, but we do object on the ground that it is hearsay and incompetent to each and every one of them, and no proper foundation laid in connecting them up any way with the particular document.

The Court: An exception may be noted. (Tr. 481)

Plaintiff's Exhibit No. 25 was at this point read in evidence, and is as follows:

[PLAINTIFF'S EXHIBIT NO. 25]

AGREEMENT

This Agreement, made and entered into this 17th day of January, 1939, by and between E. B. Siens, herein designated First Party, and James H. Collins, of 229 South Tower Drive, Beverly Hills, California, herein designated Second Party.

Witnesseth:

Whereas, Second Party desires to purchase from First Party, shares of stock of the Union Associated Mines Company, a Corporation;

(Plaintiff's Exhibit No. 25)

Now, Therefore, First Party does hereby offer to sell and deliver to the Second Party, shares of stock of the Union Associated Mines Company, in such amounts, or number of shares, and at such price per share, on or before the dates specified in the schedule as follows, to-wit:

Amount or Number of Shares	Price Per Share	Date Prior to Which Stock Is to Be Purchased
83,333	.02½¢ per share	February 1st, 1939.
83,333	.03¢ " "	March 1st, 1939.
83,333	.04¢ " "	April 1st, 1939.
83,333	.05¢ " "	May 1st, 1939.
83,333	.06¢ " "	June 1st, 1939.
83,333	.08¢ " "	July 1st, 1939.
83,333	.10¢ " "	August 1st, 1939.
83,333	.12¢ " "	September 1st, 1939.
83,333	.15¢ " "	October 1st, 1939.
83,333	.20¢ " "	November 1st, 1939.
83,333	.25¢ " "	December 1st, 1939.
83,337	.30¢ " "	January 1st, 1940.

(1) Second Party agrees to purchase from First Party, shares of stock of the Union Associated Mines Company, in such amounts or number of shares, and at the prices per share, on or before the dates hereinabove specified, and First Party agrees to deliver said stock to Second Party, or his designated agent, in such amounts or number of shares as he may purchase for the specified price on or before the dates above stated.

(2) Upon the execution of this agreement, Second Party agrees to purchase from First Party, twenty thou-

sand (20,000) shares of stock of the Union Associated Mines Company for the sum of Five Hundred ($500.00) Dollars, and agrees to purchase 63,333 shares of stock at the agreed price of .02½¢ per share on or before the 1st day of February, 1939.

(3) Second Party agrees to purchase from First Party 33,333 shares of stock of the Union Associated Mines Company on or before the 1st of February, 1939, at the agreed price of .03¢ per share, or One Thousand ($1,000.00) Dollars, and purchase the balance of said second allotment, or 50,000 shares, at the agreed price of .03¢ on or before the 1st day of March, 1939.

(4) Second Party agrees to purchase from First Party 25,000 shares of stock of the Union Associated Mines Company on or before the 1st day of March, 1939, at the agreed price of .04¢ per share, or One Thousand ($1,000.00) Dollars, and purchase the balance of said third allotment, or 58,333 shares, at the agreed price of .04¢ per share on or before the 1st day of April, 1939.

(5) Second Party agrees to purchase from First Party 20,000 shares of stock of the Union Associated Mines Company on or before the 1st day of April, 1939, at the agreed price of .05¢ per share, or One Thousand ($1,000.00) Dollars, and purchase the balance of said fourth allotment, or 63,333 shares at the agreed price of .05¢ per share on or before the 1st day of May, 1939.

(6) Second Party agrees to purchase from First Party 13,333 shares of stock of the Union Associated Mines Company on or before the 1st day of May, 1939, at the agreed price of .06¢ per share, or One Thousand ($1,000.00) Dollars, and purchase the balance of the

(Plaintiff's Exhibit No. 25)

fifth allotment, or 70,000 shares at the agreed price of .06¢ per share on or before the 1st day of June, 1939.

(7) Second Party agrees to purchase from First Party 12,500 shares of stock of the Union Associated Mines Company on or before the 1st day of June, 1939, at the agreed price of .08¢ per share, or One Thousand ($1,000.00) Dollars, and purchase the balance of the sixth allotment, or 70,833 shares, at the agreed price of .08¢ per share on or before the 1st day of July, 1939.

(8) Second Party agrees to purchase from First Party 10,000 shares of stock of the Union Associated Mines Company on or before the 1st day of July, 1939, at the agreed price of .10¢ per share, or One Thousand ($1,000.00) Dollars, and purchase the balance of the seventh allotment, or 73,333 shares, at the agreed price of .10¢ per share on or before the 1st day of August, 1939.

(9) Second Party agrees to purchase from First Party 8,333 shares of stock of the Union Associated Mines Company on or before the 1st day of August, 1939, at the agreed price of .12¢ per share, or One Thousand ($1,000.00) Dollars, and purchase the balance of the eighth allotment, or 75,000 shares, at the agreed price of .12¢ per share on or before the 1st day of September, 1939.

(10) Second Party agrees to purchase from First Party 6,666 shares of stock of the Union Associated Mines Company on or before the 1st day of September, 1939, at the agreed price of .15¢ per share, or One Thousand ($1,000.00) Dollars, and purchase the balance of the ninth allotment, or 76,667 shares, at the agreed price of .15¢ per share on or before the 1st day of October, 1939.

(Plaintiff's Exhibit No. 25)

(11) Second Party agrees to purchase from First Party 5,000 shares of stock of the Union Associated Mines Company on or before the 1st day of October, 1939, at the agreed price of .20¢ per share, or One Thousand ($1,000.00) Dollars, and purchase the balance of the tenth allotment, or 78,333 shares, at the agreed price of .20¢ per share on or before the 1st day of November, 1939.

(12) Second Party agrees to purchase from First Party 4,000 shares of stock of the Union Associated Mines Company on or before the 1st day of November, 1939, at the agreed price of .25¢ per share, or One Thousand ($1,000.00) Dollars, and purchase the balance of the eleventh allotment, or 79,333 shares, at the agreed price of .25¢ per share on or before the 1st day of December, 1939.

(13) Second Party agrees to purchase from First Party 3,333 shares of stock of the Union Associated Mines Company on or before the 1st day of December, 1939, at the agreed price of .30¢ per share, or One Thousand ($1,000.00) Dollars, and purchase the balance of the twelfth allotment, or 80,004 shares, at the agreed price of .30¢ per share on or before the 1st day of January, 1940.

(14) It is agreed that the above shares may be purchased on or before the dates hereinabove designated at the prices herein set forth.

(15) It is distinctly understood and agreed that time of payment is of the essence of this agreement, and should Second Party fail to make payment and purchase the shares of stock as hereinabove set forth on or before

(Plaintiff's Exhibit No. 25)

the specified dates, and at the designated prices, the First Party may terminate this agreement, and thereupon, First Party shall be under no further obligations or liability whatsoever under this agreement.

(16) It is the intention of the parties hereto that upon the execution of this agreement, Second Party will purchase as many shares of stock of the Union Associated Mines Company as Five Hundred ($500.00) Dollars will purchase according to the schedule under the first allotment, and on the 1st day of February, 1939, and on the first day of each and every month thereafter, Second Party will purchase from First Party as many shares of stock as One Thousand ($1,000.00) Dollars will purchase under the schedule as set forth herein, and as is more particularly set forth in Paragraphs 2 to 14 herein; receipt of the sum of Five Hundred ($500.00) Dollars, for the purchase of the first 20,000 shares of stock, is hereby acknowledged by Second Party.

In Witness Whereof, the parties hereto have hereunto set their hands and official seal on the day and year first above written.

(S) E. BYRON SIENS
FIRST PARTY

.....
SECOND PARTY

February 28th, 1939.

Received from Fran L. Tucker check for $1,650.00 on Collins Contract for which I have delivered 55000 shares Union Associated stock.

(S) E. BYRON SIENS.

(Plaintiff's Exhibit No. 25)

Los Angeles, California,
March First, 1939.

It is hereby mutually agreed and understood by and between E. B. Siens and James H. Collins, that upon the payment of the sum of Twenty two Hundred and Seven and 94/100 ($2,207.94) Dollars by James H. Collins to E. B. Siens on or before 12:00 o'clock "noon" of March Second, 1939, E. B. Siens will deliver to James H. Collins, Fifty-three thousand three hundred thirty-three (53,333) shares of stock in the Union Associated Mines Company, a Utah Corporation; and it is distinctly understood that thereby the Agreement heretofore entered into by and between the parties will continue in full force and effect, but should the said sum of money not be paid by James H. Collins on or before "Noon" of March 2nd, 1939, then the contract between the parties will be terminated; time is expressly made of the essence of this agreement.

(S) E. BYRON SIENS.
(S) JAMES H. COLLINS

Received from James Collins the $2,207.94 above mentioned which is the fulfillment of his contract.

(S) E. BYRON SIENS.

[Endorsed]: Securities and Exchange Commission. Docket No. D-515. Commission's Exhibits Nos. 127, 127-A, 128-B, 127-C, 127-D, 127-E, 127-F. In the Matter of Union Assd. Mines. Date 12-3-40. Witness James Collins. Electreporter, Inc., Official Reporters; by Morris.

[Endorsed]: Case No. 15229. U. S. vs. Collins et al. Pltfs. Exhibit No. 25 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. E. N. Frankenberger, Deputy Clerk.

Mr. Cannon: Will you not stipulate with me, too, Mr. Manster, that this copy of the contract which has been introduced in evidence was voluntarily delivered by Mr. Collins—

Mr. Manster: That is correct.

Mr. Cannon: —to Mr. Burr of the local S. E. C. office in early April, 1939?

Mr. Manster: Precisely. (Tr. 487)

(The group of letters heretofore marked Plaintiff's Exhibit No. 15 for identification, was received in evidence.)

JOHN McEVOY,

a witness called by and on behalf of the Government, having [71] been first duly sworn, testified as follows:

Direct Examination

By Mr. Manster:

My name is John McEvoy and I live at Lynwood, California, and am a claims adjuster for Standard Accident Insurance Company, and have been such for three and one-half years. I was formerly engaged in the securities business for about six months, in 1938, being employed by Edgerton, Riley and Walter. I know the defendants Collins, Gordon, Fischgrund, Schirm and Morgan. I first met Collins in December, 1938, and shortly after I met the other men. In December, 1938, a few days before Christmas, Collins and Joseph Murphy came to my house in Los Angeles, and Murphy introduced Collins and said Collins had a contract with the Plymouth Oil Company to purchase a million or a million and a half shares of stock of the Union Associated Mines Company; that the contract was with Plymouth Oil Company.

(Testimony of John McEvoy)

Murphy said Union Associated was formerly engaged in the mining business in Utah, and that Gordon of Los Angeles had negotiated for the purchase or obtaining of a lot of stock of that company and through his nephew, Mr. Lacey, they had formed Plymouth Oil Company in Los Angeles for the purpose of drilling wells in the Torrance region, and that Plymouth Oil Company also had some land in Devil's Den. Murphy said that Gordon was recognized as quite an oil man in Los Angeles, California, and that the stock of the Union Associated Mines, or some of it, had been acquired by Plymouth Oil Company, and that Plymouth, through the money to be furnished by Lacey, was going to drill or was drilling a well, and that Plymouth Oil Company and Union Associated were going to share in the production of the oil. (Tr. 491) Murphy and Collins then said that if I had any money or any friends with money [72] that they thought it was a good deal to purchase stock of Union Associated, and if I wanted to I could come down to the offices of the Plymouth Oil Company and there talk to Mr. Siens, who they told me was an oil man and that I could there meet the officers of the company. They said Gordon was president and Guy Davis was secretary-treasurer of Plymouth Oil Company, and Mr. Fischgrund, vice-president. Morgan was not mentioned. I went down to the Plymouth offices and met Collins, and I think Murphy was there, and I met Siens, Davis and Fischgrund. They all participated in a general talk, but neither Gordon nor Morgan were there. Siens said that an application was presented, or would be presented for listing the stock of Union Associated Mines on the Salt Lake Stock Exchange, and he said he thought that later they would have it on the San Francisco Exchange. Siens said they already had one

(Testimony of John McEvoy)

well on production in Torrance, and it was producing about 350 barrels a day, and I think he said there was either a second well started or was ready to start down in the same territory, and he said that the stock was to be handled by Mr. Barclay who was a broker in Salt Lake, and president of the Exchange, and that with Barclay pushing the stock there would be no question about the price of the stock going up, and that Siens himself thought as soon as the stock could be listed on the market, in Salt Lake, it should be bringing 10 cents a share. I think Collins and Murphy stated that they thought it would be around 10 cents when it opened up. Siens said he thought it would go to $5.00 or $10.00 a share in time after it had been listed, and Siens said, "You know that Collins has an agreement here with us that his price runs up to 50 cents a share ultimately," and he said, "You can see that a dollar a share would be nothing for this stock on the market." Siens said Lacey is [73] a very wealthy man and that he was putting up all the money that was necessary for all the drilling that they could hope to do, and said that it was a good opportunity to get in on the ground floor. I told him I would think it over, and I talked it over with a friend of mine and then I purchased the first batch of stock from Collins, the day before Christmas, it being 10,000 or 12,000 shares. I paid 2½ cents for it. Collins stated that he would like very much to have me try and interest my friends, to increase the number of stockholders, because they wanted to have this stock listed and have distribution and be able to trade it, and he stated that if I would interest some of my friends he would take care of me insofar as permitting me to buy some of the stock under his contract at or near the same price he was paying for it, but did not say how much.

(Testimony of John McEvoy)

(Tr. 496) Eventually I bought some stock and sold some to Hampton, to a Mr. Peet, to a Mr. Williams, to a Miss Klinger, and to Mrs. Walker, although I never saw Mrs. Walker personally. (Tr. 497) My arrangement was to buy the stock from Collins at his price from Siens, and then make my profit on the increased price at which I would sell it to various investors, and then when the stock was listed I was supposed to have an opportunity to purcchase under Collins' contract and obtain whatever profit there might be through the market. Siens and Collins told me Barclay was going to run the deal insofar as the stock was concerned when it was listed on the Salt Lake Exchange and that he could be depended upon to drive the price up, and that was how I was also to make a profit, by having the right to buy some of Collins' stock under his contract. Later I met Mr. Gordon in his office in the Subway Terminal Building and I saw Schirm there, but do not believe I ever met him. I talked with Gordon, I think, in February, 1939, with refer- [74] ence to stock that was owned by and the anticipated purchase or more stock by Miss Walker, Miss Klinger, and Miss Davis. Gordon said he was about to leave for Texas, and wanted me to go over and see Miss Klinger and Miss Walker, and he prepared a letter which I took over to these women, Miss Klinger and Miss Walker. Siens, Gordon, and I were present. Gordon said the well was holding up fine and that there was approximately 350 barrels a day production, and that I could tell these women that that stock was expected to be listed very shortly, and there would be no doubt that that stock should go up to $1.00 a share on that market shortly after it was listed, and that they expected to declare a dividend on the stock in March, 1939, the following month. Pursuant to that

(Testimony of John McEvoy)

conversation I visited Miss Walker and Miss Klinger the next day, in Pasadena, and sold Miss Walker some stock through Miss Klinger. I repeated to her what Siens and Collins and Gordon and Davis had told me.

A. The conversation that I had with Miss Klinger—in that conversation I repeated to her what Mr. Siens and Mr. Collins and Mr. Gordon and Mr. Davis had told me, those things that I have already related.

Mr. Cannon: Just a minute. I move to strike it out on the ground that it is hearsay as to all the defendants in the case, as to what conversation he had with Miss Klinger.

The Court: Go ahead.

Mr. Cannon: It is overruled, do I understand?

The Court: Yes.

Mr. Cannon: Exception. May I have a running exception to it all, all the conversation had between this man, who was engaged in the selling of the stock, and any conversation he had with other persons whom he sold, on the ground it is hearsay? [75]

The Court: Yes. (Tr. 502)

(Witness continuing)

At this same conversation where Siens, Gordon and I were present, Siens asked Gordon to be sure and arrange with Lacey to meet the payroll at the well while Gordon was in Texas, and Gordon then used the telephone and made arrangements for Davis to pick up the check to meet the payroll. I had conversations with Hampton, Peet, and Williams in the Plymouth office.

Q. By Mr. Manster: Now, were you using the Plymouth offices at that time? A. Yes.

(Testimony of John McEvoy)

Q. What was your purpose in using the Plymouth offices?

A. To interview anybody that might be interested in the stock of the Union Oil Company, the Union Associated Mines Company.

Q. Just give us a rough idea of who occupied these offices, who shared space there with you?

A. Well, the front office was occupied by Mr. Siens and Mr. Collins, and the one adjoining that was occupied by Mr. Fischgrund, and the one adjoining that one, all with communicating doors, was the Plymouth Oil Company offices where Guy Davis had his desk.

Q. Which room did you use?

A. The front office where Mr. Siens and Mr. Collins were. (Tr. 505) [75a]

In January, 1939, Hampton said he had already purchased stock in the Union Associated Mines Company through a brokerage house, and he wondered when the stock was going to be listed on the Exchange and as to how the production was holding up, and I repeated to him what I had been told by Siens, Davis, Collins, and Murphy, by telling him that they expected the stock to be listed some time in February, 1939, on the Salt Lake Exchange, and that the well was holding up to approximately 350 barrels a day; and that they were drilling on the other well. I believe on that occasion I sold Hampton some more stock, 5,000 or 10,000 shares. Siens, of course, told Hampton that they expected to drill many, many wells in Torrance, and that Barclay, who he described as the head of the Stock Exchange in Salt Lake, was coming down to Los Angeles shortly and that he would want him to talk to Barclay as to the listing of the stock. Later I

(Testimony of John McEvoy)

had a conversation when Barclay was present, in the Foreman Building, and Collins, Murphy, Barclay, Hampton and several others were there, and Barclay said that he had come down here first to actually see the well on production, and secondly, to be able to say for himself that he had interviewed Mr. Lacey and that he was satisfied that there would be sufficient money in the future available to continue the drilling program, and wanted to report that back to the Salt [76] Lake brokers who were going to handle the stock with him when it was listed (Tr. 508); he had gone to the well with Davis, and had met Lacey, and was satisfied that there would be all the money necessary for the drilling of the well; and he said the stock yould be listed shortly, and he thought it would open up at 25 cents a share and that after several weeks trading he could see that it went up to a dollar a share on the Salt Lake market. Hampton was there and heard it, but I am not clear whether Hampton bought any more stock then, or not. Early in March, 1939, I was with Collins, Murphy, Siens, Davis and Bill Millener, and Siens and Davis stated that the well had come in and that it was doing fine and was producing about 500 barrels a day, and that if they opened it up they could get it up to 1,000 barrels a day; this was the second well. Collins was there when this statement was made. I do not know what participation Murphy had in this undertaking. I knew Murphy before he was connected with this deal. I met Millener in the Plymouth office. He was there quite frequently. I first met him during the Christmas holidays in 1938. In the offices they said that this was the same Millener who had taken an assignment on a lease from Gordon in the Devil's Den area. I never made any independent investigation on my own account in con-

(Testimony of John McEvoy)

nection with the statements that were made to me (Tr. 511), and I placed full faith and reliance on the statements that were made to me by the individuals whom I have mentioned.

Q. Did you communicate substantially the information which you received to people to whom you sold stock?

Mr. Cannon: I object, if the court please, as calling for a conclusion, and it is hearsay as far as these defendants are concerned, and no foundation laid for any such declaration.

The Court: Well, he sold the stock and he had to tell the [77] purchasers something.

Mr. Cannon: Sure, that is quite true, but I am *insist* upon the objection anyway.

The Court: He may answer.

Mr. Cannon: Exception. A. I did. (Tr. 512)

(Witness continuing)

I sold stock in the Union Associated Mines Company from January, 1939, until around the end of February or March, 1939.

Cross-Examination

By Mr. Cannon:

I am 43 years old, and before going with the Walter firm I was secretary to an attorney for four years, in Philadelphia. I am not an attorney, but I was admitted to the bar in Philadelphia, but I do not still hold my license in Philadelphia. I was disbarred; I had some difficulties there, in 1929, involving some accident cases, ambulance chasing. I was not promised immunity in this case. In April, 1939, Collins and I went to the S. E. C.

(Testimony of John McEvoy)

together and made a statement, although I did not make it when I first went up there. I made my statement near the end of 1942, in Los Angeles, but I have not read it since I was subpoenaed in this case. I do not have any memoranda from which I have been refreshing my recollection as to the dates and conversations, and I am testifying from my own memory. My talk with Collins concerning his contract was a couple of days before December 23rd or 24th, 1938; approximately December 20th. Murphy introduced me to Collins, and said that Collins had a contract with Plymouth for the purchase of a million or a million and a half shares. I do not believe I ever read the contract, although I believe that the next day [78] at the Plymouth office, or that same day, Collins exhibited his contract there, and I think I did read it. That was several days after I met Collins, I believe in December. The contract of January 17, 1939, between Siens and Collins was read by me, but I believe I read one dated prior to that, with the Plymouth Oil Company. It may have been dated January 6, but if it was dated January 6 I could not have read it in the latter part of December or the early part of January. I do remember definitely reading one that was between Collins and the Plymouth Oil Company, providing for the purchase by Collins of so many shares of stock at graduated prices, but I do not know whether it was a million or a million and a half shares of the Union Associated Mines. I did not think there was anything morally wrong in the contract. Under the arrangement I had with Collins I was supposed to get stock at or near his price, although there was nothing definite about it. He just said that he would give me some of his stock at his price, but if not there would be some slight increase for any expenses that he

(Testimony of John McEvoy)

might have. I believe I paid a half a cent more for my stock than Collins paid for his in January, 1939. (Tr. 520) I never raised any complaint about the price that I was charged for the stock. I believe it was in February that Gordon told me the well was doing 350 barrels, but I could not tell the exact date. It was the day he was leaving for Texas. I do not think it was the latter part of February, but it may have been about the middle of February. Gordon at no other time told me that the well was doing 350 barrels, and no one else told me except Mr. Siens, on a half a dozen occasions. The first time Siens told me was in December, 1938, just about Christmas time. I did not go down to look at the well at any time that I recall. (Tr. 522) [79]

Q. By Mr. Cannon: What was it you say Mr. Gordon told you in February, 1939?

A. Mr. Gordon, in his office in company with Mr. Siens, stated that the well was still producing approximately 350 barrels a day and that he had a letter that he wanted me to deliver over to the McCormick Estate for Miss Walker, and that I could feel perfectly safe in telling them over there that the stock would be listed shortly and that it should open up at about 10¢ a share.

Q. Anything else?

A. Yes. He said that Mr. Barclay, of Salt Lake City, who was the president of the Stock Exchange up there, would push this stock and it would be no trouble at all getting it up to $1.00 a share.

Q. All right. Then what?

A. Then he made a telephone call to Roy Lacy and arranged for the payroll, for Guy Davis to either pick it up or for him to send it to Guy Davis.

(Testimony of John McEvoy)

Q. All right. And they also said in that conversation that when this stock was up to $1.00 a share that you could make a profit on the market by selling the stock that you had a call on, is that right? A. Yes, sir.

Q. So you were in this deal, were you not, with the idea of making money?

A. So was everybody else.

Q. I am not asking you that. You were, at least, weren't you? A. I certainly was. (Tr. 523, 524) [79a] I was in this deal with the idea of making money, as was everybody else, and having this call on the stock that was covered by Collins' contract, I expected that when the stock was listed to feed my stock to the market at the increased price and buy other stock if I could get any from Collins. I got all I asked for and all that I paid for. I never had a fall out with Collins. I have not seen him in about a year's time. I am friendly with him. I did not come here voluntarily. I know that Collins filed a civil suit later, against the Plymouth Oil Company. I would not say that I was the one that got him to file that suit. I introduced him to Mr. Kennedy who was the attorney for him and who was known to Murphy and me; before we went up to see Mr. Kennedy I did not tell Collins to file the suit, that Lacey could not afford to stand the publicity of the suit. I gave my statement to the S. E. C. around the end of 1942, I am fairly sure. I also gave one on November 18, 1943; but I gave one before that, too. I did not have any fear of being indicted. When I first went to the S. E. C. I was informed that the indictments were already returned. At the time I went there they informed me of my constitutional rights. When Collins and I went up to the S. E. C. office on the first occasion, we went voluntarily, but I do not remember the name of

(Testimony of John McEvoy)

the S. E. C. man. Collins gave him some information but I did not, but I did not know that of my own knowledge because I was not present. I believe when Collins came out he said that Burr was out of town, but I don't know who he talked to, and when I went in there, I asked them if there was anything they wanted from me and I believe they said that there was not, and that if there was they would contact me, and they took my name and address. (Tr. 530) I saw Mr. Evans of the S. E. C. at one time, but [80] I never gave him any statements at that time. It was sometime during the intervening years. It wasn't right at that time. It was in September, 1942. At that time I told Mr. Evans what I have said here today. Then I went back again near the end of 1943 and told him about the same thing that I have told him in the previous statement what I have said here today.

Cross-Examination

By Mr. Blue:

I think I talked to Mr. Gordon twice in my entire life. Collins, Murphy, Siens and Davis told me in December the well was doing 350 barrels a day. Mr. Davis, Mr. Siens, both, told me the same thing. I did not sell any stock in December but I bought some for myself in December—12,000 shares, and paid 2½ cents for them. Mr. Smith, a friend of mine, and I split the 12,000. I took 6,000 and he took 6,000, and I got from Smith one-half of what I paid. I later sold my 6,000 shares but I do not know exactly when I sold it, nor to whom I sold it. I got more than two cents for it. I think three or three and one-half cents. I don't know. I do not know who I told it to, whether it was a man or a woman. I sold some to Schwabacher & Company, a brokerage house

(Testimony of John McEvoy)

on South Spring Street, and got a confirmation of it, but goodness knows where it is now. I placed the order in my own name. It was not in December of 1938. I think it was in January of 1938. I do not know how much I sold it for. I sold all 6,000 shares and a lot of others, too. I do not know how many shares I sold through Schwabacher & Company. I have never been convicted of a felony. This is the first and only time that I have been engaged in selling stock, and I am licensed to sell stock, and got a license from the State Corporation [81] Department of the State of California as a salesman. Before that I was secretary to an attorney for about four years in Philadelphia, from 1933 to 1937. When I came to Los Angeles I went to work for Edgerton, Riley and Walter. (Tr. 538) I am married and am settling insurance claims for Standard Accident Insurance Company.

Q. Now, you remember you testified, as I understand the Plymouth Oil Company offices, and Bill Millener was there, and Siens, and Davis came in, and they said that it, that Mr. Gordon told you in February that the No. 1 well was doing 350 barrels. Now, is your memory as clear about that as it is about this 6,000 shares of stock that you don't know who you sold it to?

A. Well, I bought a lot of stock, a good many thousand shares, and I can't remember just a particular sale. where it finally wound up. I don't remember that. (Tr. 539)

(Witness continuing)

I do not think I filed an income tax return in 1939 nor in 1940. When the 350 barrels was mentioned in February, I was told that well No. 2 was supposed to be in a better location than well No. 1, and that they ex-

(Testimony of John McEvoy)

pected to finish it off sometime before the end of February, 1939. I called on Miss Walker in February, 1939, but I cannot fix the exact date. I was never told in February of 1939 that the production of No. 1 well, together with No. 2 well, would give Plymouth Oil Company about 350 barrels a day. (Tr. 541) Near the beginning of March, Collins, Murphy, and myself went to the Plymouth Oil Company offices, and Bill Millener was there, and Siens and Davis came in, and they said that they had just come from the well and that it was on production and was producing about 500 barrels a day, and that if they wanted to open it up they could let it go for 1,000 a day. I do not remember that I was ever out at the well with Davis, but I have been out at the [82] Torrance Field before. I bought and paid for 6,000 shares. Smith got 6,000 shares and he called up a friend of his at the Farmers & Merchants Bank and asked about Lacey, and Smith said that if Lacey was in the deal it must be a good deal. I have been to Torrance on some occasions. That was before I became interested in this deal. I saw a lot of wells there. Prior to connecting myself with this deal I had sold interests for a man named Krause, in wells in the Torrance Field. Krause was trying to raise, I think, about $5,000.00 additional money, and for each $1,000.00 he was supposed to give a certain interest in the well, and I sold some of these interests to a woman by the name of White, and got $1,000.00 and delivered her some kind of a paper prepared by Krause stating that she was entitled to so much percent of the profits of that well, but I do not remember the per cent. That was in April, 1938, but I do not recall what interest she got for that $1,000.00. That well did not come in a producer. It was never drilled to completion because the